

## AMS/FAST CHANGE REQUEST (CR) COVERSHEET

**Change Request Number:** 17-39A

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**Title:** OMB Circular Update -Guidance

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**Policy and Guidance:** (check all that apply)

- ☐ Policy
- ☒ Procurement Guidance
- ☐ Real Estate Guidance
- ☐ Other Guidance
- ☐ Non-AMS Changes

**Summary of Change:** Replacement of references to OMB Circulars A-21, A-87, A-102, A-110, and A-122 with reference to OMB Guidance "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" dated December 26, 2013.

**Reason for Change:** New OMB Guidance has superseded OMB Circulars.

**Development, Review, and Concurrence:** Cost and Pricing, Procurement Policy, Procurement Legal, and Contracts

**Target Audience:** Program Offices and Contracts

**Briefing Planned:** Yes.

**ASAG Responsibilities:** ASAG electronically approved on March 24, 2017.

**Section / Text Location:** T3.3.2, T3.8.1, and T3.10.1.

**The redline version must be a comparison with the current published FAST version.**

☒ I confirm I used the latest published version to create this change / redline  
or

○ This is new content

**Links:**

<http://fast.faa.gov/docs/procurementGuidance/guidanceT3.3.2.pdf>

<http://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.1.pdf>

<http://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.1.pdf>

**Attachments:** Redline and final documents.

**Other Files:** N/A

**Redline(s):**

**Sections Revised:**

**3.3.2 A 1 – Applicability**

**3.3.2 A 3 – Contracts with Educational Institutions**

**3.3.2 A 4 – Contracts with State, Local, and Federally Recognized Indian Tribal**

**Governments**

**3.3.2 A 5 – Contracts with Nonprofit Organizations**

**Procurement Guidance - (~~1/2017~~ 4/2017)**

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T3.3.2 - Contract Cost Principles Revised 10/2007

A Contract Cost Principles

1 Applicability Revised ~~7/2007~~ 4/2017

2 Contracts with Commercial Organizations Revised 10/2014

3 Contracts with Educational Institutions Revised ~~7/2007~~ 4/2017

4 Contracts with State, Local, and Federally Recognized Indian Tribal Governments Revised ~~7/2007~~ 4/2017

5 Contracts with Nonprofit Organizations Revised ~~7/2007~~ 4/2017

B Clauses

C Forms

D Appendix Added 7/2007

1 Appendix - Summary of Selected Costs Revised 1/2012

2 Appendix - Selected Costs Revised 10/2014

3 Appendix - Definitions Added 7/2007

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## **T3.3.2 - Contract Cost Principles Revised 10/2007**

### **A Contract Cost Principles**

#### **1 Applicability Revised ~~7/2007~~ 4/2017**

a. *General.* To recognize different organizational characteristics, FAA cost principles and procedures are classified by organizational type, e.g., commercial concerns and educational institutions. The objective of this classification is to ensure, to the extent practicable, all similar types of organizations doing similar work follow the same cost principles and guidance. In general, FAA cost principles apply when the Contracting Officer (CO) performs cost analysis to price contracts, subcontracts, and modifications to contracts and subcontracts; and when a contract clause requires determination, negotiation, or allowance of costs.

b. *Fixed-price Contracts.*

(1) The applicable parts of AMS Procurement Guidance T3.3.2 must be used to price fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever:

(a) Cost analysis is performed; or

(b) A fixed-price contract clause requires the determination or negotiation of costs.

(2) Applying cost principles to fixed-price contracts and subcontracts must not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Notwithstanding mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

c. *Contracts with Commercial Organizations.*

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations (other than educational institutions, construction and architect-engineer contracts, State and local governments, and nonprofit organizations) on the basis of cost.

(1) The cost principles and procedures in the below Section 2. “Contracts with Commercial Organizations” must be used to price negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed.

(2) The CO must incorporate the cost principles and procedures in this Procurement Guidance T3.3.2 by reference in contracts with commercial organizations as the basis for:

- (a) Determining reimbursable costs under cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations; and the cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost;
- (b) Negotiating indirect cost rates;
- (c) Proposing, negotiating, or determining costs under terminated contracts;
- (d) Price revision of fixed-price incentive contracts;
- (e) Price redetermination of price redetermination contracts; and
- (f) Pricing changes and other contract modifications.

d. *Contracts with Educational Institutions.*

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions.

(1) The CO must incorporate the cost principles and procedures of the below Section 3. "Contracts with Educational Institutions," by reference in cost-reimbursement contracts with educational institutions as the basis for:

- (a) Determining reimbursable costs under the contracts and cost-reimbursement subcontracts under these contracts performed by educational institutions;
- (b) Negotiating indirect cost rates; and
- (c) Settling costs of cost-reimbursement terminated contracts.

(2) The cost principles in this Procurement Guidance T3.3.2 are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

e. *Construction and Architect-engineer Contracts.*

This category includes all contracts and contract modifications negotiated on the basis of cost with organizations (other than educational institutions, State and local governments, and nonprofit organizations except those exempted under OMB ~~Circular A-122~~Guidance "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> ("OMB Uniform Guidance")) for construction management or construction, alteration or repair of buildings, bridges,

roads, or other kinds of real property). It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(1) Except as otherwise provided in subparagraph e.(3) below, the cost principles and procedures in the below Section 2. "Contracts with Commercial Organizations" must be used to price contracts and contract modifications in this category if cost analysis is performed.

(2) The CO must incorporate the cost principles and procedures in the below Section 2. "Contracts with Commercial Organizations (as modified by subparagraph e.(3) below) by reference in contracts in this category as the basis for:

- (a) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts under these contracts;
- (b) Negotiating indirect cost rates;
- (c) Proposing, negotiating, or determining costs under terminated contracts;
- (d) Price revision of fixed-price incentive contracts; and
- (e) Pricing changes and other contract modifications.

(3) Except as otherwise provided in this subparagraph e.(3), the allowability of costs for construction and architect-engineer contracts must be determined in accordance with the below Section 2. "Contracts with Commercial Organizations."

(a) Advance agreements, as set forth in the below paragraph i. "Advance Agreements," for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts because of widely varying factors such as the nature, size, duration, and location of the construction project. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(b) "Construction equipment," as used in this subparagraph e.(3), means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs must be determined as follows:

(AA) Actual cost data must be used when such data can be determined for both ownership and operations costs for each piece of equipment, or

groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the FAA may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subparagraphs e.(3)(b)(i)(BB) and (CC) below). However, costs otherwise unallowable under this Procurement Guidance T3.3.2 must not become allowable through the use of any schedule (see below subparagraph i(3) "Advance Agreements"). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. COs should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(BB) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(CC) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule must be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership must not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting construction equipment are allowable (but see preceding subparagraph e.(3)(b)(i)(CC)).

(AA) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(BB) Costs incident to major repair and overhaul of rental equipment are unallowable.

(CC) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with Attachment 2, Cost (33)(b)(3) "Rental Costs."

(c) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(d) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

*f. Facilities Contracts.*

(1) *Applicable Cost Principles.* The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts, and subcontracts under these contracts, will be governed by the type of entity to which a facilities contract is awarded.

Except as otherwise provided in this paragraph f. "Facilities Contracts": Section 2. "Contracts with Commercial Organizations," applies to facilities contracts awarded to commercial organizations; Section 3. "Contracts with Educational Institutions," applies to facilities contracts awarded to educational institutions; and paragraph 1.e., "Construction and Architect-engineer Contracts," applies to facilities contracts awarded to construction contractors.

Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed. In addition, the CO must incorporate the cost principles and procedures appropriate in the circumstances by reference in facilities contracts as the basis for:

(a) Determining reimbursable costs under facilities contracts, including cost-reimbursement subcontracts under these contracts;

(b) Negotiating indirect cost rates; and

(c) Determining costs of terminated contracts when the contractor elects to "voucher out" costs.

(2) *Exceptions to General Rules on Allowability and Allocability.*

(a) A contractor's established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services.

(b) Advance agreements (see below paragraph i. "Advance Agreements") should be made between the contractor and CO as to indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor's usual method of allocating indirect cost shall be varied, and appropriate adjustment must be made to the pools of indirect cost and the bases of their distribution.

(c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(d) Contracts providing for installation of new facilities or rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. A facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.

(3) *Contractor's Commercial Items.* If facilities constituting the contractor's usual commercial items (or only minor modifications thereof) are acquired by the Government under the contract, the Government must not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.



*g. Contracts with State, Local, and Federally Recognized Indian Tribal Governments.*

(1) *Applicable Cost Principles.* The below Section 4. "Contracts with State, Local, and Federally Recognized Indian Tribal Governments" provides principles and standards for determining costs applicable to contracts with State, local, and Federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and Federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and Federally recognized Indian tribal governments, except contracts with:

(a) Publicly financed educational institutions; or

(b) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(2) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

*h. Contracts with Nonprofit Organizations.*

The below Section 5. "Contract with Nonprofit Organizations" provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB ~~Circular No. A-122~~Uniform Guidance.

*i. Advance Agreements.*

(1) The extent of allowability of the costs covered in this Procurement Guidance T.3.3.2 applies broadly to many accounting systems in varying contract situations. The reasonableness, allocability and allowability under specific cost principles of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles, COs and contractors should seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles.

(2) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement must contain a statement of its applicability and duration.

(3) The CO is not authorized by this paragraph i. to agree to a treatment of costs inconsistent with this Procurement Guidance T3.3.2. For example, an advance agreement may not provide

that, notwithstanding Attachment 2, Cost (17) “Interest and Other Financial Costs,” interest is allowable.

(4) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(5) The cognizant CO, or other designated administrative CO, negotiates advance agreements. When the negotiation authority is delegated, the administrative CO coordinates the proposed agreement with the cognizant CO before executing the advance agreement.

(6) Before negotiating an advance agreement, the Government negotiator must:

(a) Determine if other contracting offices inside FAA or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(b) Inform any such office or agency of the matters under consideration for negotiation; and

(c) As appropriate, invite the office or agency and the responsible audit agency to participate in ~~prenegotiation~~pre-negotiation discussions and in subsequent negotiations.

(7) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and negotiation memorandum.

(8) Examples of costs for which advance agreements may be particularly important are:

(a) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

(b) Use charges for fully depreciated assets;

(c) Deferred maintenance costs;

(d) Precontract costs;

(e) Independent research and development and bid and proposal costs;

(f) Royalties and other costs for use of patents;

(g) Selling and distribution costs;

- (h) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;
- (i) Costs of idle facilities and idle capacity;
- (j) Severance pay to employees on support service contracts;
- (k) Plant reconversion;
- (l) Professional services (e.g., legal, accounting, and engineering);
- (m) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts;
- (n) Costs of construction plant and equipment; (o) Costs of public relations and advertising; and
- (p) Training and education costs.

*j. Indirect Cost Rate Certification and Penalties on Unallowable Costs.*

Certain contracts require certification of the indirect cost rates proposed for final payment purposes.

If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed.

## **2 Contracts with Commercial Organizations Revised 10/2014**

*a. Composition of Total Cost.*

(1) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to Attachment 2. Cost (7). In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances.

(2) Although the total cost of a contract includes all costs properly allocable to the contract, allowable costs to the Government are limited to those allocable costs that are allowable pursuant to this Procurement Guidance Section T3.3.2.

*b. Determining Allowability.*

(1) The factors to be considered in determining whether a cost is allowable include:

(a) Reasonableness.

(b) Allocability.

(c) Standards promulgated by the Cost Accounting Standards (CAS) Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.

(d) Terms of the contract.

(e) Any limitations set forth in this Section 2. "Contracts with Commercial Organizations."

(2) Certain cost principles in this Section 2. "Contracts with Commercial Organizations" incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected CAS. Only those CAS or portions of standards specifically made applicable by the cost principles in this Procurement Guidance Section T3.3.2 are mandatory, unless the contract is CAS-covered. Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(3) When contractor accounting practices are inconsistent with the cost principles in this Section 2. "Contracts with Commercial Organizations," costs resulting from such inconsistent practices must not be allowed in excess of the amount that would have resulted from using practices consistent with this section.

(4) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The CO may disallow all or part of a claimed cost which is inadequately supported.

*c. Determining Reasonableness.*

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person conducting competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to

effective competitive restraints. No presumption of reasonableness must be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the CO or the CO's representative, the burden of proof must be upon the contractor to establish that such cost is reasonable. What is reasonable depends upon a variety of considerations and circumstances, including:

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.

*d. Determining Allocability.*

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to allowability and reasonableness, a cost is allocable to a Government contract if it:

- (1) Is incurred specifically for the contract;
- (2) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (3) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

*e. Credits.*

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor must be credited to the Government either as a cost reduction or by cash refund. See Attachment 2, Cost (4) for rules governing refund or credit to the Government associated with pension adjustments and asset reversions.

*f. Accounting for Unallowable Costs.*

- (1) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, must be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(2) Costs which specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a CO must be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this subparagraph f.(2) or subparagraph f.(1) above.

(3) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(4) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided all of the following criteria are met:

(a) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(b) Any large dollar value or high risk transaction is separately reviewed for unallowable costs and excluded from the sampling process.

(c) The statistical sampling permits audit verification.

(5) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under paragraph i. "Advance Agreements" between the contractor and CO. The advance agreement should specify the basic characteristics of the sampling process. The CO must request input from the cognizant auditor before entering into any such agreements.

(6) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the CO or CO's representative, the burden of proof must be on the contractor to establish that such a method meets the criteria in subparagraph f.(4) above.

(7) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost must remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(8) In determining the materiality of a directly associated cost, consideration should be given to the significance of:

(a) The actual dollar amount;

(b) The cumulative effect of all directly associated costs in a cost pool; or

(c) The ultimate effect on the cost of Government contracts.

(9) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with subparagraph f.(8) above (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(10) When a selected item of cost under Attachment 2, "Selected Costs" provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in above subparagraphs f.(8) and 2.f.(9), except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

*g. Construction and Architect-engineer Contracts.*

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts related to construction projects, are in paragraph 1.e. "Construction and Architect-Engineer Contracts."

*h. Direct Costs*

(1) A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective must have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(2) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment is consistently applied to all final cost objectives and produces substantially the same results as treating the cost as a direct cost.

*i. Indirect Costs*

(1) An indirect cost is any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged

directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost must not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

(2) Indirect costs must be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(3) Once an appropriate base for distributing indirect costs has been accepted, it must not be fragmented by removing individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.

(4) The contractor's method of allocating indirect costs must be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise, the method must be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when:

(a) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work;

(b) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(c) Indirect cost groupings developed for a contractor's primary location are applied to offsite locations. Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(d) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance in Section 2. "Contracts with Commercial Organizations" for



selecting the cost accounting periods to be used in allocating indirect costs are incorporated herein for application to contracts subject to full CAS coverage. For contracts subject to modified CAS coverage and for non-CAS-covered contracts, the base period for allocating indirect costs will normally be the contractor's fiscal year. But a shorter period may be appropriate in the following instances:

(i) For contracts in which performance involves only a minor portion of the fiscal year; or

(ii) When it is general practice in the industry to use a shorter period. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.

(5) Special care should be exercised in applying the principles of above subparagraphs i.(2), i.(3), and i.(4) (b), (c), and (d) when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division, or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

*j. Application of Principles and Procedures*

(1) Costs must be allowed to the extent they are reasonable, allocable, and determined to be allowable under this Procurement Guidance Section T3.3.2. These criteria apply to all of the selected items that follow in Attachment 2 "Selected Costs," even if particular guidance is provided for certain items for emphasis or clarity.

(2) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with this Procurement Guidance Section T3.3.2:

(a) Cost-reimbursement.

(b) Fixed-price incentive.

(c) Price redeterminable (*i.e.*, fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(3) The requirements of above subparagraph j.(2)(a) apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(4) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed, must be allowable only to the extent that the price was negotiated in accordance with the above paragraph 1.b. "Fixed-price Contracts."

(5) The above paragraph 1.e "Construction and Architect-engineer Contracts" does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability must be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subparagraph in 1.e "Construction and Architect-Engineer Contracts" is relevant to a contractor cost, the cost must be apportioned among the applicable subparagraphs, and the determination of allowability of each portion must be based on the guidance contained in the applicable subparagraph. When a cost, to which more than one subparagraph in 1. e "Construction and Architect-Engineer Contracts" is relevant, cannot be apportioned, the determination of allowability must be based on the guidance contained in the topics that most specifically deals with, or best captures the essential nature of, the cost at issue.

### **3 Contracts with Educational Institutions** Revised 7/2007 4/2017

a. *Purpose.* This Subsection provides the principles for determining cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

b. *General.* ~~Office of Management and Budget (OMB) Circular No. A-21, "Cost Principles for Educational Institutions, Revised,"~~ OMB Uniform Guidance provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions under contracts with the Government.

c. *Requirements.*

(1) Contracts that refer to this Section 3. "Contracts with Educational Institutions" for determining allowable costs under contracts with educational institutions must be deemed to refer to, and must have the allowability of costs determined by the CO in accordance with, the revision of OMB ~~Circular A-21~~ Uniform Guidance in effect on the date of the contract.

(2) FAA should not place additional restrictions on individual items of cost.

### **4 Contracts with State, Local, and Federally Recognized Indian Tribal Governments**

Revised 7/2007 4/2017

a. *Purpose.* This Subsection provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

b. *General.* ~~Office of Management and Budget (OMB) Circular No. A-87, "Cost Principles for State and Local Governments, Revised,"~~ OMB Uniform Guidance sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the

circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

*c. Requirements.*

(1) Contracts that refer to this Section 4. "Contracts with State, Local, and Federally Recognized Indian Tribal Governments" for determining allowable costs under contracts with State, local and Indian tribal governments must be deemed to refer to, and must have the allowability of costs determined by the CO in accordance with, the revision of OMB ~~Circular A-87~~ Uniform Guidance which is in effect on the date of the contract.

(2) FAA should not place additional restrictions on individual items of cost. However, the following costs are unallowable:

- (a) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).
- (b) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.
- (c) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).
- (d) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments.
- (e) Costs of any membership in any social, dining, or country club or organization.
- (f) Costs of alcoholic beverages.
- (g) Contributions or donations, regardless of the recipient.
- (h) Costs of advertising designed to promote the contractor or its products.
- (i) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
- (j) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(k) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(l) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(m) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States.

(n) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(o) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State.

## **5 Contracts with Nonprofit Organizations** Revised 7/2007 4/2017

a. *Purpose.* This Subsection provides the principles for determining cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

b. *General.* ~~Office of Management and Budget (OMB) Circular No. A-122, "Cost Principles for Nonprofit Organizations,"~~ OMB Uniform Guidance sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other agreements) with the Government.

c. *Requirements.*

(1) Contracts which determine allowable costs pursuant to this Section 5. "Contracts With Nonprofit Organizations" must be deemed to refer to, and must have the allowability of costs determined by the CO in accordance with, the revision of OMB ~~Circular A-122~~ Uniform Guidance in effect on the date of the contract.

(2) FAA should not place additional restrictions on individual items of cost. However, the costs cited in subparagraph c.(2) "Requirements" of the above Section 4. "Contracts with State, Local, and Federally Recognized Indian Tribal Governments" are unallowable.

## **B Clauses**

[view contract clauses](#)

## **C Forms**

[view procurement forms](#)

## **D Appendix Added 7/2007**

### **1 Appendix - Summary of Selected Costs Revised 1/2012**

<b>Selected Cost Title</b>	<b>Selected Cost Number</b>	<b>Allowable</b>	<b>Unallowable</b>	<b>Exception / Restriction Applies</b>
Alcoholic Beverages	Cost 47		X	
Asset Valuations Resulting from Business Combinations	Cost 48	X		X
Bad Debts	Cost 2		X	
Bonding Costs	Cost 3	X		X
Compensation for Personal Services	Cost 4	X		X
Contingencies	Cost 5		X	X
Contributions or Donations	Cost 6		X	
Cost of Money	Cost 7	X		X
Depreciation	Cost 8	X		X
Economic Planning Costs	Cost 9	X		
Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits	Cost 10	X		X

Entertainment Costs	Cost 11		X	
Fines, Penalties, and Mischarging Costs	Cost 12		X	X
Gains and Losses on Disposition or Impairment of Depreciable Property or Other Capital Assets	Cost 13	X		X
Goodwill	Cost 46		X	
Idle Facilities and Idle Capacity Costs	Cost 14		X	X
Independent Research and Development and Bid and Proposal Costs	Cost 15	X		X
Insurance and Indemnification	Cost 16	X		X
Interest and Other Financial Costs	Cost 17		X	X
Labor Relations Costs	Cost 18	X		X
Legal and Other Proceedings	Cost 44		X	X
Lobbying and Political Activity Costs	Cost 19		X	X
Losses on Other Contracts	Cost 20		X	
Manufacturing and Production Engineering Costs	Cost 22	X		
Material Costs	Cost 23	X		
Organization Costs	Cost 24		X	
Other Business Expenses	Cost 25	X		
Patent Costs	Cost 27	X		X
Plant Protection Costs	Cost 26	X		
Plant Reconversion Costs	Cost 28		X	X
Precontract Costs	Cost 29	X		
Professional and Consultant Service Costs	Cost 30	X		X
Public Relations and Advertising Costs	Cost 1		X	X
Recruitment Costs	Cost 31	X		X
Relocation Costs	Cost 32	X		X

Rental Costs	Cost 33	X		
Research and Development Costs	Cost 45	X	X	
Royalties and Other Costs for Use of Patents	Cost 34	X		X
Selling Costs	Cost 35		X	X
Service and Warranty Costs	Cost 36	X		
Special Tooling and Special Test Equipment Costs	Cost 37	X		
Taxes	Cost 38	X		X
Termination Costs	Cost 39	X		X
Trade, Business, Technical and Professional Activity Costs	Cost 40	X		
Training and Education Costs	Cost 41	X		X
Travel Costs	Cost 43	X		X

## 2 Appendix - Selected Costs Revised 10/2014

This Appendix 2 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability must be based on the principles and standards in AMS Procurement Guidance T3.2.2 and the treatment of similar or related selected items.

### (1) *Public Relations and Advertising Costs.*

(a) “Public relations” means all functions and activities dedicated to:

- (1) Maintaining, protecting, and enhancing the image of a concern or its products;  
or
- (2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) “Advertising” means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in subparagraphs (e)(1) through (6).

(d) The only allowable advertising costs are those that are

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding subparagraphs (d)(1), (d)(3), (d)(4)(ii) and (d)(5) ( of this subsection). However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with Cost (31) Recruitment Costs.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (*e.g.*, blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).



(4) Costs of plant tours and open houses (but see subparagraph (d)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs, other than those specified in subparagraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under Cost (35), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as

- (i) Corporate celebrations and
- (ii) New product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

**(2) *Bad Debts.***

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

**(3) *Bonding Costs.***

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

**(4) *Compensation for Personal Services.***

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (g), (h), (j), (k), (m), and (o) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant CO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Procurement Guidance Section T3.3.2 are not allowable under this subsection solely on the basis that they constitute compensation for personal services.

(6)

(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include:

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) For these individuals, compensation must-

(A) Be reasonable for the personal services

rendered; and

(B) Not be a distribution of profits (which is not an allowable contract cost).

(iii) For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal Revenue Code (26 U.S.C.) and regulations under it is unallowable.

(b) *Reasonableness*

(1) *Compensation pursuant to labor-management agreements.* If costs of compensation established under "arm's length" labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements.* Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total compensation, consider only allowable individual elements of compensation. In testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms

(i) Of the same size;

- (ii) In the same industry;
- (iii) In the same geographic area; and
- (iv) Engaged in similar non-Government work under comparable circumstances.

(c) [Reserved]

(d) *Form of payment.*

(1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of

- (i) Cash;
- (ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation); or
- (iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

- (i) Valuation placed on the securities is the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis available.
- (ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Income tax differential pay.*

(1) Differential allowances for additional income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under Cost (32).

(f) *Bonuses and incentive compensation.*

(1) Bonuses and incentive compensation are allowable provided the-

- (i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and
- (i) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (f)(1) and (k) of this subsection.

(g) *Severance pay.*

(1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(6) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by

- (i) Law;
- (ii) Employer-employee agreement;
- (ii) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or
- (iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant. However, if the contractor uses the accrual method to account for normal turnover severance payments, that method will be acceptable if the amount of the accrual is-

- (i) Reasonable in light of payments actually made for normal severances over a representative past period; and
- (ii) Allocated to all work performed in the contractor's plant.

(5) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.

(6) The costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. The head of the agency is permitted to waive these cost allowability limitations under certain circumstances.

(h) *Back pay*. Back pay is a retroactive adjustment of prior years' salaries or wages. Back pay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable.

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if-

- (i) A formal agreement or understanding exists between management and the employees concerning these payments; or
- (ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

(i) *Compensation and Price of Corporate Securities*. Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under Cost (4)(d) "Compensation and Price of Corporate Securities," such payments are also unallowable.

(j) *Pension costs.*

(1) A pension plan is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined-benefit or defined-contribution pension plans. The cost of all defined-benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Cost Accounting Standard for composition and measurement of pension cost, and 48 CFR 9904.413, Adjustment and allocation of pension cost. The costs of all defined-contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412 and 48 CFR 9904.413. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in subparagraph (j)(2)(i) and in subparagraphs (j)(3) through (7) of this subsection.

- (i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be funded by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be allocated in the cost accounting period that the pension costs are assigned.
- (ii) Pension payments must be reasonable in amount and must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans that are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.
- (iii) Except as provided for early retirement benefits in subparagraph (j)(7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

- (iv) Increases in payments to previously retired plan participants covering cost-of living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined-benefit Pension Plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

- (i)
  - (A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).
  - (B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412-50(d)(2).
  - (C) For nonqualified pension plans using the pay- as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412-50(d)(3).
- (ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412-50(a)(4), and shall be allowable in the future period to which it is assigned, to the extent it is allocable, reasonable, and not otherwise unallowable.
- (iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c). Determinations of unallowable costs shall be made in accordance with the actuarial cost method used in calculating pension costs.
- (iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case



basis, provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate in the indemnification payment to the extent of its fair share.

- (iv) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of subparagraph (j)(6) of this subsection apply. The advance agreement shall

- (A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

- (B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

*(4) Pension Adjustments and Asset Reversions.*

- (i) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to subparagraph A.2 of Procurement Guidance Section T3.3.2 or for which cost or pricing data were submitted.
- (ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to this Procurement Guidance section 3.3.2. Excise taxes on pension plan asset reversions or withdrawals under this subparagraph (j)(4)(ii) are unallowable in accordance with Cost (38)(b)(6).

(5) *Defined-contribution Pension Plans.* This paragraph covers those pension plans in which the contributions are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan in subparagraph (j)(1) of this subsection.

- (i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).
- (ii) The provisions of subparagraphs (j)(3)(ii) and (iv) of this subsection apply to defined-contribution plans.

(6) *Pension Plans Using the Pay-as-you-go Cost method.* The cost of pension plans using the pay-as-you-go cost method shall be measured, allocated, and accounted for in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method shall be allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

(7) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in subparagraphs (j)(3)(ii) through (iv) provided

- (i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs;
- (ii) The payments are made in accordance with the terms and conditions of the contractor's plan;
- (iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and
- (iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(8) *Employee Stock Ownership Plans (ESOP).*

- (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOP are or will be at a fair market price; *e.g.*, makes arrangements

with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

- (ii) Amounts contributed to an ESOP arising from either
  - (A) An additional investment tax credit (see 1975 Tax Reduction Act TRASOP's); or
  - (B) A payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.
- (iii) The requirements of subparagraph (j)(3)(ii) of this subsection are applicable to Employee Stock Ownership Plans.

(k) *Deferred Compensation Other Than Pensions.*

(1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(l) *Compensation Incidental to Business Acquisitions.* The following costs are unallowable:

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

(m) *Fringe Benefits.*

(1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in subparagraph A.2 of Procurement Guidance T3.3.2. "Contracts with Commercial Organizations," the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see Cost (43)(f)).

(n) *Employee Rebate and Purchase Discount Plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement Benefits Other Than Pensions (PRB).*

(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with subparagraphs (o)(2)(i) or (iii) of this section.

- (i) *Cash Basis.* Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.
- (ii) *Terminal Funding.* If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.
- (iii) *Accrual Basis.* Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) Costs of postretirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

(6) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts

for which cost or pricing data were required or which were subject to subparagraph A.2. "Contracts with Commercial Organization" of Procurement Guidance T3.3.2.

(p) *Limitation on Allowability of Compensation for Certain Contractor Personnel.*

(1) Costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year are unallowable. This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.

(2) As used in this paragraph:

(i) "Compensation" means the total amount of wages, salary, bonuses, deferred compensation (see subparagraph (k) of this subsection), and employer contributions to defined contribution pension plans (see subparagraphs (j)(5) and (j)(7) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) "Senior executive" means

(A) Prior to January 2, 1999;

(aa) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(bb) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(cc) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

- (iii) "Fiscal year" means the fiscal year established by the contractor for accounting purposes.
- (iv) "Contractor's headquarters" means the highest organizational level from which executive compensation costs are allocated to Government contracts.

(q) *Employee Stock Ownership Plans (ESOP)*

(1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

(2) Costs of ESOPs are allowable subject to the following conditions:

- (i) For ESOPs that meet the definition of a pension plan at, the contractor:
  - (A) Measures, assigns, and allocates the costs; and
  - (B) Funds the pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year.
- (ii) For ESOPs that do not meet the definition of a pension plan, the contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.
- (iii) Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.
- (iv) When the contribution is in the form of stock, the value of the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.
- (v) When the contribution is in the form of cash:



(A) Stock purchases by the ESOP in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the contractor must credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

- (iii) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

#### ***(5) Contingencies.***

(a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.

(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage.

#### ***(6) Contributions or Donations.***

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in Cost (1)(c)(3).

**(7) *Cost of Money***

(a) *General.* Cost of money:

(1) Is an imputed cost that is not a form of interest on borrowings [see Cost (17)];

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided-

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of Cost (48), which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

**(8) *Depreciation.***

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under Cost (23)(e) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed. In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the requirements of Cost (48) shall be observed.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down [see Cost (13)(h)]. However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) In the event the contractor reacquires property involved in a sale and leaseback arrangement, allowable depreciation of reacquired property shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement:

(1) Adjusted for any allowable gain or loss; and

(2) Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title.

j. A "capital lease," as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, is subject to the requirements of this cost principle. FAS-13 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that:

(1) Lease costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset; and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

**(9) *Economic Planning Costs.***

Economic planning costs are the costs of general long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs are allowable. Economic planning costs do not include organization or reorganization costs covered by Cost.(24). See Cost (35) for market planning costs other than economic planning costs.

**(10) *Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits.***

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, subject to the limitations contained in this subsection. Some examples of allowable activities are-

(1) House publications;

(2) Health clinics;

(3) Wellness/fitness centers;

(4) Employee counseling services; and

(5) Food and dormitory services for the contractor's employees at or near the contractor's facilities. These services include-

(i) Operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations; and

- (ii) Similar types of services.

(b) *Costs of Gifts Are Unallowable.* (Gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d)

(1) The allowability of food and dormitory losses are determined by the following factors:

- (i) Losses from operating food and dormitory services are allowable only if the contractor's objective is to operate such services on a break-even basis.
- (ii) Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the objective in paragraph (d)(1)(i) of this subsection are not allowable, except as described in paragraph (d)(1)(iii) of this subsection.
- (iii) A loss may be allowed to the extent that the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. The following are examples of unusual circumstances:
  - (A) The contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available.
  - (B) The contractor's charged (but unproductive) labor costs would be excessive if the services were not available.
  - (C) If cessation or reduction of food or dormitory operations will not otherwise yield net cost savings.

(2) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see subparagraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, are allowable only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

**(11) *Entertainment Costs.*** Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

**(12) *Fines, Penalties, and Mischarging Costs.***

(a) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.

**(13) *Gains and Losses on Disposition or Impairment of Depreciable Property or Other Capital Assets.***

(a) Gains and losses from the sale, retirement, or other disposition [but see Cost (16)] of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included [but see subparagraph (d) of this subsection]. However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination . See subparagraph Cost (48), "Asset Valuations Resulting from Business Combinations."

(b) Notwithstanding the provisions in paragraph (c) of this subsection, when costs of depreciable property are subject to the sale and leaseback limitations:

(1) The gain or loss is the difference between the net amount realized and the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(2) When the application of (b)(1) of this subsection results in a loss:

- (i) The allowable portion of the loss is zero if the fair market value exceeds the undepreciated balance of the asset on the date the contractor becomes a lessee; and
- (ii) The allowable portion of the loss is limited to the difference between the fair market value and the undepreciated balance of the asset on the date the contractor becomes a lessee if the fair market value is less than the undepreciated balance of the asset on the date the contractor becomes a lessee.

(c) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases, shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see subdivisions (c)(2)(i) or (ii) of this section).

(d) Special considerations apply to an involuntary con-version which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either

- (i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or
- (ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in subparagraph (d)(1) of this subsection.

(e) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when

(1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under Cost.(8); or

(2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(f) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

(g) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

(h) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (*e.g.*, environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

**(14) *Idle Facilities and Idle Capacity Costs.***

(a) "Costs of idle facilities or idle capacity," as used in this subsection, means costs such as maintenance, repair, housing, rent, and other related costs; *e.g.*, property taxes, insurance, and depreciation.

(1) "Facilities," as used in this subsection, means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

(2) "Idle capacity," as used in this subsection, means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(3) "Idle facilities," as used in this subsection, means completely unused facilities that are excess to the contractor's current needs.

(b) The costs of idle facilities are unallowable unless the facilities

(1) Are necessary to meet fluctuations in workload; or



(2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see Cost (39)).

(c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

**(15) *Independent Research and Development and Bid and Proposal Costs.***

**(a) *Definitions.***

(1) "Applied research," as used in this subsection, means that effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term "development," defined in this subsection.

(2) "Basic research," as used in this subsection, means that research which is directed toward increase of knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

(3) "Bid and proposal (B&P) costs," as used in this subsection, means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract.

(4) "Company," as used in this subsection, means all divisions, subsidiaries, and affiliates of the contractor under common control.

(5) "Development," as used in this subsection, means the systematic use, under whatever name, of scientific and technical knowledge in the design, development,

test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes

- (i) Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or
- (ii) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.
- (iii) "Independent research and development (IR&D)," as used in this subsection, means a contractor's IR&D cost that consists of projects falling within the four following areas: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.
- (iv) "Systems and other concept formulation studies," as used in this subsection, means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

(b) *Composition and Allocation of Costs.* The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.

(2) *Modified CAS-covered and Non-CAS-covered Contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:

- (i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.
- (ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* Except as provided in subparagraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.*

(1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that

- (i) The total amount of IR&D costs applicable to the product can be identified;
- (ii) The proration of such costs to sales of the product is reasonable;
- (iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and
- (iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

(e) *Cooperative Arrangements.*

(1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under

- (i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));
- (ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6));
- (iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or
- (iv) Other equivalent authority.

(2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

#### ***(16) Insurance and Indemnification.***

(a) Insurance by purchase or by self-insuring includes

(1) Coverage the contractor is required to carry or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Government considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Government will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges are allowable subject to paragraph (e) of this subsection and the following limitations:

- (1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.
- (2) The contractor shall comply with Procurement Guidance T3.4.1. However, approval of a contractor's insurance program does not constitute a determination as to the allowability of the program's cost.
- (3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.
- (4) Self-insurance charges for risks of catastrophic losses are unallowable.

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

- (1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.
- (2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of
  - (i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and
  - (ii) Reasonable fronting company charges for services rendered.
- (3) Actual losses are unallowable unless expressly provided for in the contract, except-
  - (i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and
  - (ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

- (i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.
- (iii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.
- (iv) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.
- (iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.
- (v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation [see Procurement Guidance T3.3.2].

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

**(17) *Interest and Other Financial Costs.*** Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights, and directly associated costs are unallowable except for interest assessed by State or local taxing authorities under the conditions specified in Cost (38) [but see Cost (25)].

**(18) *Labor Relations Costs.*** (a) Costs incurred in maintaining satisfactory relations between the contractor and its employees, (other than those made unallowable in paragraph (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable. Examples of unallowable costs in paragraph (b) of this section include, but are not limited to, the costs of—

(1) Preparing and distributing materials;

(2) Hiring or consulting legal counsel or consultants;

(3) Meetings (including paying the salaries of the attendees at meetings held for this purpose); and

(4) Planning or conducting activities by managers, supervisors, or union representatives during work hours.

**(19) *Lobbying and Political Activity Costs.***

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence

- (i) The introduction of Federal, state, or local legislation, or
- (ii) The enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence

- (i) The introduction of Federal, state, or local legislation, or
- (ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or

(6) Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

(b) The following activities are excepted from the coverage of (a) of this section:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in



deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(d) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable.

(e) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of this subsection.

**(20) *Losses on Other Contracts.*** An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

**(21) *RESERVED***

**(22) *Manufacturing and Production Engineering Costs.***

(a) The costs of manufacturing and production engineering effort as described in (1) through (4) of this subparagraph are all allowable:

(1) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools and techniques that are or are expected to be used in producing products or services;

(2) Developing and deploying pilot production lines;

(3) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis (including tooling design and application improvements); and

(4) Material and manufacturing producibility analysis for production suitability and to optimize manufacturing processes, methods, and techniques.

(b) This cost principle does not cover

(1) Basic and applied research effort (as defined in Cost (15)(1)) related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by Cost (15), Independent Research and Development and Bid and Proposal Costs; and

(2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques that are intended for sale is also governed by Cost (15).

(c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of Cost (8), "Depreciation".

**(23) *Material Costs.***

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and in-transit insurance. In computing material costs, the contractor shall consider reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work).

(b) The contractor shall-

(1) Adjust the costs of material for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors; and

(2) Credit such income and other credits either directly to the cost of the material or allocate such income and other credits as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, the contractor does not need to credit lost discounts.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable.

(e) Allowance for all materials, supplies and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be

on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception and the contracting officer has not determined the price to be unreasonable.

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the contractor-

(1) Should adjust the price to reflect the quantities being acquired; and

(2) May adjust the price to reflect the actual cost of any modifications necessary because of contract requirements.

**(24) *Organization Costs.***

(a) Except as provided in subparagraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by Cost (4). These activities include acquiring stock for

(1) Executive bonuses,

(2) Employee savings plans, and

(3) Employee stock ownership plans.

**(25) *Other Business Expenses.*** The following types of recurring costs are allowable:

(a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.

- (b) Cost of shareholders' meetings.
- (c) Normal proxy solicitations.
- (d) Preparing and publishing reports to shareholders.
- (e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.
- (f) Incidental costs of directors' and committee meetings.
- (g) Other similar costs.

**(26) *Plant Protection Costs.*** Costs of items such as

- (a) Wages, uniforms, and equipment of personnel engaged in plant protection,
- (b) Depreciation on plant protection capital assets, and
- (c) Necessary expenses to comply with military requirements, are allowable.

**(27) *Patent Costs.***

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract [but see Cost (30)]:

- (1) Costs of preparing invention disclosures, reports, and other documents.
- (2) Costs for searching the art to the extent necessary to make the invention disclosures.
- (3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.

(b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable [but see Cost (30)].

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable. [See also Cost (34)].

**(28) *Plant Reconversion Costs.*** Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately

before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred.

Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

**(29) *Precontract Costs.*** Precontract costs are those incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract.

**(30) *Professional and Consultant Service Costs.***

(a) *Definition.* "Professional and consultant services", as used in this subpart, are those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this subparagraph and subparagraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government [but see Costs (27) and (44)].

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

- (1) Services to improperly obtain, distribute, or use information or data protected by law or regulation .
- (2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.
- (3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.
- (4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

- (1) The nature and scope of the service rendered in relation to the service required.
- (2) The necessity of contracting for the service, considering the contractor's capability in the particular area.
- (3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.
- (4) The impact of Government contracts on the contractor's business.
- (5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.
- (6) Whether the service can be performed more economically by employment rather than by contracting.
- (7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.
- (8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, termination provisions).

(e) Retainer fees, to be allowable, must be supported by evidence that

- (1) The services covered by the retainer agreement are necessary and customary;
- (2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);
- (3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and
- (4) The actual services performed are documented in accordance with subparagraph (f) of this subsection.

(f) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. [See also Cost (35)]. However, retainer agreements generally are not

based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include

- (1) Details of all agreements (*e.g.*, work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;
- (2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and
- (3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

**(31) *Recruitment Costs.***

(a) Subject to subparagraph (b) of this subsection, the following costs are allowable:

- (1) Costs of help-wanted advertising.
- (2) Costs of operating an employment office needed to secure and maintain an adequate labor force.
- (3) Costs of operating an aptitude and educational testing program.
- (4) Travel costs of employees engaged in recruiting personnel.
- (5) Travel costs of applicants for interviews.
- (6) Costs for employment agencies, not in excess of standard commercial rates.

(b) Help-wanted advertising costs are unallowable if the advertising

- (1) Does not describe specific positions or classes of positions; or
- (2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

**(32) *Relocation Costs.***

(a) Relocation costs are costs incident to the permanent change of assigned work location (for a period of 12 months or more) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection:

(1) Costs of travel of the employee and members of the employee's immediate family [see Cost (43)] and transportation of the household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by the employee or the spouse, or both, to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs incident to the disposition of the actual residence owned by the employee when notified of the transfer (*e.g.*, brokerage fees, legal fees, appraisal fees, points, and finance charges), except that these costs, when added to the costs described in paragraph (a)(4) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, and mortgage interest, after the settlement date or lease date of a new permanent residence, except that these costs, when added to the costs described in paragraph (a)(3) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that- (i) These costs are not allowable for existing employees or newly recruited employees who were not homeowners before the relocation; and

(ii) The total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.



- (ii) When mortgage differential payments are made on a lump- sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Costs of canceling an unexpired lease.

(10) Payments for increased employee income or Federal Insurance Contributions Act (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs.

(11) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this subsection must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not be otherwise unallowable under Procurement Guidance Section T3.3.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a flat amount, not to exceed \$5,000, may be allowed in lieu of actual costs.

(5) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (*e.g.*, transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation:

- (i) Costs of finding a new home.
- (ii) Costs of travel to the new location (but not costs for the transportation of household goods).

- (iii) Costs of temporary lodging.
- (iv) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

(c) The following types of costs are unallowable:

(1) Loss on the sale of a home.

(2) Costs incident to acquiring a home in the new location as follows:

- (i) Real estate brokers' fees and commissions.
- (ii) Costs of litigation.
- (iii) Real and personal property insurance against damage or loss of property.
- (iv) Mortgage life insurance.
- (v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence.  
(However, the cost of a mortgage title policy is allowable.)
- (vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of subparagraphs (a) through (d) of this section, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if

(1) The term of employment is 12 months or more;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of subparagraphs (a) through (d) of this section. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of subparagraph (d).

**(33) Rental Costs.**

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with A.2.e.(8)(m) requires that assets acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate (but see subparagraph (b)(4) of this section).

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of

- (i) Rental costs of comparable property, if any;
- (ii) Market conditions in the area;
- (iii) The type, life expectancy, condition, and value of the property leased;
- (iv) Alternatives available; and
- (v) Other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organizations under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to this

Procurement Guidance Section T3.3.2), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) of this subsection.

(4) Rental costs under leases entered into before March 1, 1970 for the remaining term of the lease (excluding options not exercised before March 1, 1970) to the extent they would have been allowable under Defense Acquisition Regulation (formerly ASPR) 15-205.34 or Federal Procurement Regulations section 1-15.205-34 in effect January 1, 1969.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in (39) of this subsection.

***(34) Royalties and Other Costs for Use of Patents.***

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless

(1) The Government has a license or the right to a free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; *e.g.*, royalties

(1) Paid to persons, including corporations, affiliated with the contractor;

(2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

(d) See A.1.(i) regarding advance agreements.

**(35) *Selling Costs.***

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of A.2.e. The costs of any selling efforts other than those addressed in this cost principle are unallowable.

(b) Selling activity includes the following broad categories:

(1) *Advertising.* Advertising is defined at Cost (1), and advertising costs are subject to the allowability provisions of Cost (1)(b).

(2) *Corporate image enhancement.* Corporate image enhancement activities, including broadly targeted sales efforts, other than advertising, are included within the definition of public relations at Cost (1)(a), and the costs of such efforts are subject to the allowability provisions at Cost (1)(a)

(3) *Bid and proposal costs.* Bid and proposal costs are defined at Cost (15) and are subject to the allowability provisions of that subsection.

(4) *Market planning.* Market planning involves market research and analysis and general management planning concerned with development of the contractor's business. Long-range market planning costs are subject to the allowability provisions of Cost (9). Other market planning costs are allowable.

(5) *Direct selling.* Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such efforts as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting efforts, individual demonstrations, and any other efforts having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable.

(c) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

**(36) *Service and Warranty Costs.*** Service and warranty costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

**(37) *Special Tooling and Special Test Equipment Costs.***

(a) The terms "special tooling" and "special test equipment" are defined in AMS Procurement Guidance T3.10.3.

(b) The cost of special tooling and special test equipment used in performing one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of

(1) Items acquired by the contractor before the effective date of the contract (or replacement of such items), whether or not altered or adapted for use in performing the contract, and

(2) Items which the contract schedule specifically excludes, shall be allowable only as depreciation or amortization.

(c) When items are disqualified as special tooling or special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

**(38) *Taxes.***

(a) The following types of costs are allowable:

(1) Federal, State, and local taxes, except as otherwise provided in subparagraph (b) of this section that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

(2) Taxes otherwise allowable under subparagraph (a)(1) of this section, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes

(i) Promptly requests instructions from the contracting officer concerning such taxes; and

(ii) Takes all action directed by the contracting officer arising out of subparagraph (2)(1) of this section or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, to

(A) Determine the legality of the assessment or

(B) Secure a refund of such taxes.

(3) Pursuant to subparagraph (a)(2) of this section, the reasonable costs of any action taken by the contractor at the direction or with the concurrence of the contracting officer. Interest or penalties incurred by the contractor for non- payment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to ensure timely direction after a prompt request.

(4) The Environmental Tax found at section 59A of the Internal Revenue Code, also called the "Superfund Tax."

(b) The following types of costs are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations [see Costs (17) and (24)].

(3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see subparagraph (c) of this section).

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.

(8) Any tax imposed under 26 U.S.C. 5000C (Imposition of Tax on Certain Foreign Procurements)

(c) Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax because of the payment of any tax or duty allowed as contract costs, and if those costs were reimbursed by a foreign government, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is filed. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

**(39) Termination Costs.** Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in this Procurement Guidance Section T3.3.2:

(a) *Common items.* The costs of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs Continuing After Termination.* Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall be unallowable.



(c) *Initial Costs.* Initial costs, including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as

- (i) Excessive spoilage due to inexperienced labor;
- (ii) Idle time and subnormal production due to testing and changing production methods;
- (iii) Training; and
- (iv) Lack of familiarity or experience with the product, materials, or manufacturing processes.

(2) Preparatory costs incurred in preparing to perform the terminated contract include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.

(3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) *Loss of Useful Value.* Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided

- (1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;
- (2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.

(e) *Rental Under Unexpired Leases.* Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) *Alterations of Leased Property.* The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for performing the contract.

(g) *Settlement Expenses.*

(1) Settlement expenses, including the following, are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for

(A) The preparation and presentation, including supporting data, of settlement claims to the contracting officer; and

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor Claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with

subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with Procurement Guidance T3.3.2. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

**(40) Trade, Business, Technical and Professional Activity Costs.** The following types of costs are allowable:

- (a) Memberships in trade, business, technical, and professional organizations.
- (b) Subscriptions to trade, business, professional, or other technical periodicals.
- (c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity
  - (1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;
  - (2) Costs of attendance by contractor employees, including travel costs [see Cost (43)]; and
  - (3) Costs of attendance by individuals who are not employees of the contractor, provided
    - (i) Such costs are not also reimbursed to the individual by the employing company or organization, and
    - (ii) The individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.

**(41) Training and Education Costs.**

(a) *Allowable Costs.* Training and education costs are allowable to the extent indicated below.

(b) *Vocational Training.* Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include

- (1) Salaries or wages of trainees (excluding overtime compensation),
- (2) Salaries of the director of training and staff when the training program is conducted by the contractor,

(3) Tuition and fees when the training is in an institution not operated by the contractor, and/or

(4) Training materials and textbooks.

(c) *Part-time College Level Education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see subparagraph (h) of this subsection).

(d) *Full-time Education.* Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) *Specialized Programs.* Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree- oriented curriculum, which are only allowable pursuant to subparagraphs (c) and (d) of this subsection.

(f) *Other Expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with Costs (8), (14), (21) and (33).

(g) *Grants.* Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) *Advance Agreements.*

(1) Training and education costs in excess of those otherwise allowable under subparagraphs (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as

- (i) The length of employees' service with the contractor;
- (ii) Employees' past performance and potential;
- (iii) Whether employees are in formal development programs; and
- (iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) *Training or Education Costs for Other Than Bona Fide Employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) *Employee Dependent Education Plans.* Costs of college plans for employee dependents are unallowable.

**(42) *RESERVED***

**(43) *Travel Costs.***

(a) *Costs for Transportation, Lodging, Meals, and Incidental Expenses.*

(1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs

for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the

- (i) Federal Travel Regulations, (Stock No. 922-002-00000-2) prescribed by the [General Services Administration](#), for travel in the conterminous 48 United States, available on a subscription basis from the: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;
- (ii) [Department of Defense](#) Per Diem, Travel and Transportation Allowance Committee (PDTATAC) bulletins, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available in the Federal Register (or in the Section 925 Supplement to the guidance cited under (a)(2)(iii) below); or
- (iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," (Stock No. 744-008-00000-0) prescribed by the [Department of State](#), for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

- (i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in subparagraphs (a)(2)(i), (ii), or (iii) of this subsection, must exist.
- (ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or

designee to ensure that the authority is properly administered and controlled to prevent abuse.

- (iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.
- (iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to subparagraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by subparagraph (a)(3)(ii) and, if applicable, subparagraph (a)(3)(iii) of this subsection must be retained.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

(5) An advance agreement with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge

- (i) When no lodging costs are incurred; and/or
- (ii) On partial travel days (*e.g.*, day of departure and return). Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the applicable Federal Travel Regulations, they must result in a reasonable charge.

(7) Costs shall be allowable only if the following information is documented

- (i) Date and place (city, town, or other similar designation) of the expenses;
- (ii) Purpose of the trip; and
- (iii) Name of person on trip and that person's title or relationship to the contractor.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract.

(d) Airfare costs in excess of the lowest-priced airfare available to the contractor during normal business hours are unallowable except when the lowest priced airfare require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(e)

(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in subparagraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than standard airfare listed in subparagraph (d) of this subsection are applicable, or when an advance agreement under subparagraph (e)(3) of this subsection has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate

- (i) Date, time, and points of departure;
- (ii) Destination, date, and time of arrival;
- (iii) Name of each passenger and relationship to the contractor;
- (iv) Authorization for trip; and
- (v) Purpose of trip.

(3) Where an advance agreement is proposed, consideration may be given to the following:



- (i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.
- (ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(f) Costs of contractor-owned or -leased automobiles, as used in this subparagraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in Cost (4)(m)(2).

**(44) *Costs Related to Legal and Other Proceedings.***

**(a) *Definitions***

- (1) "Conviction," as used in this subsection, is defined in T3.2.2.7, A.2.e.
- (2) "Costs" include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceeding.
- (3) "Fraud," as used in this subsection, means
  - (i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,
  - (ii) Acts which constitute a cause for debarment or suspension under Procurement Guidance Section T3.2.2.7 and
  - (iii) Acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C. § 8702.
- (4) "Penalty," does not include restitution, reimbursement, or compensatory damages.
- (5) "Proceeding," includes an investigation.

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct or imposition of a monetary penalty where the proceeding does not involve an allegation of fraud or similar misconduct;

(3) A final decision by an appropriate official of an executive agency to

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b)(1) through (3) of this subsection (but see subparagraphs (c) and (d) of this subsection); or

(5) Not covered by subparagraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b)(1) through (4) of this subsection.

(c)

(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under subparagraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of subparagraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor,

determines that there was very little likelihood that the third party would have been successful on the merits.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in subparagraph (b) of this subsection, but which are not made unallowable by that subparagraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under subparagraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in subparagraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with:

(1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government.

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions [see also Cost (24)].

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either

(i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or

(ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when

(A) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or

(B) When agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

(g) Costs which may be unallowable under Cost (44), including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by subparagraph (b) and subparagraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

***(45) Research and Development Costs.***

"Research and development," as used in this subsection, means the type of technical effort which is described in Cost (15) but sponsored by a grant or required in performance of a contract . When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

**(46) *Goodwill.***

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

**(47) *Costs of Alcoholic Beverages.***

Costs of alcoholic beverages are unallowable.

**(48) *Asset Valuations Resulting from Business Combinations.***

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

**3 Appendix - Definitions Added 7/2007**

Applicable definitions for FAA cost principles and guidance are as follows:

“Accrued benefit cost method” means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; *i.e.*, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan’s inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.).

“Accumulating costs” means collecting cost data in an organized manner, such as through a system of accounts.

“Actual cash value” means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

“Actual costs” means (except for contracts with State, Local, and Federally-recognized Indian Tribal Governments) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

“Actuarial accrued liability” means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

“Actuarial assumption” means an estimate of future conditions affecting pension cost; *e.g.*, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

“Actuarial cost method” means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

“Actuarial gain and loss” means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

“Actuarial valuation” means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

“Allocate” means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

“Compensated personal absence” means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

“Compensation for personal services” means all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor.

“Cost input” means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

“Cost objective” means (except for contracts with State, Local, and Federally-recognized Indian Tribal Governments) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

“Deferred compensation” means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

“Defined-benefit pension plan” means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

“Defined-contribution pension plan” means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

“Directly associated cost” means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

“Estimating costs” means the process of forecasting a future result in terms of cost, based upon information available at the time.

“Expressly unallowable cost” means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

“Final cost objective” means (except for contracts with Educational Institutions, and contracts with State, Local, and Federally-recognized Indian Tribal Governments) a cost objective that has allocated to it both direct and indirect costs and, in the contractor’s accumulation system, is one of the final accumulation points.

“Fiscal year” means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

“Funded pension cost” means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

“Home office” means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative

functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

“Immediate-gain actuarial cost method” means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

“Independent research and development (IR&D) cost” means the cost of effort which is neither sponsored by a grant, nor required in performing a contract, and which falls within any of the following four areas

- (a) Basic research,
- (b) Applied research,
- (c) Development, and
- (d) Systems and other concept formulation studies.

“Indirect cost pools” means (except for contracts with Educational Institutions, and contracts with State, Local, and Federally-recognized Indian Tribal Governments) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

“Insurance administration expenses” means the contractor’s costs of administering an insurance program; *e.g.*, the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

“Intangible capital asset” means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

“Job” means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level—as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

“Job class of employees” means employees performing in positions within the same job.



“Labor cost at standard” means a pre-established measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

“Labor market” means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors—

- (1) Geography,
- (2) Education and/or technical background required,
- (3) Experience required by the job,
- (4) Licensing or certification requirements,
- (5) Occupational membership, and
- (6) Industry.

“Labor-rate standard” means a pre-established measure, expressed in monetary terms, of the price of labor.

“Labor-time standard” means a pre-established measure, expressed in temporal terms, of the quantity of labor.

“Material cost at standard” means a pre-established measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

“Material-price standard” means a pre-established measure, expressed in monetary terms, of the price of material.

“Material-quantity standard” means a pre-established measure, expressed in physical terms, of the quantity of material.

“Moving average cost” means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

“Nonqualified pension plan” means any pension plan other than a qualified pension plan as defined in this part.

“Normal cost” means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

“Original complement of low cost equipment” means a group of items acquired for the initial outfitting of a tangible capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

“Pay-as-you-go cost method” means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

“Pension plan” means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

“Pension plan participant” means any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan’s participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer’s pension plan.

“Profit center” means (except for contracts with Educational Institutions, and contracts with State, Local, and Federally-recognized Indian Tribal Governments) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

“Projected benefit cost method” means either—

(1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees’ prospective benefits over a period of years, usually their working careers; or

(2) A modification of the accrued benefit cost method that considers projected compensation levels.

“Proposal” means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

“Qualified pension plan” means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

“Self-insurance charge” means a cost which represents the projected average loss under a self-insurance plan.

“Service life” means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

“Standard cost” means any cost computed with the use of pre-established measures.

“Tangible capital asset” means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

“Termination of employment gain or loss” means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

“Variance” means the difference between a pre-established measure and an actual measure.

“Weighted average cost” means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

**Section Revised:**

**3.8.1 A 2 – Section 106 Cooperative Agreements**

Procurement Guidance - (~~1/2017~~ 4/2017)

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T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

A Agreements, Cooperative Agreements, Gifts and Bequests

1 Agreements Revised 7/2014

2 Section 106 Cooperative Agreements Revised ~~4/2013~~ 4/2017

3 Gifts and Bequests Revised 7/2006

4 Interagency Procurement Revised 10/2010

5 Reimbursable Agreements and Other Transaction Reimbursable Agreements Revised 7/2014

B Clauses

C Forms

D Appendix

1 Attachment 1 - Parallel Authorities

2 Attachment 2 - Sample Interagency Agreement Revised 10/2007

3 Attachment 3 - Sample Intra-agency Agreement Revised 10/2007

4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity Revised 10/2007

5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU) Revised 10/2007

6 Attachment 6 - Sample Section 106 Cooperative Agreement Revised 4/2013

7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements

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### **T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007**

#### **A. Agreements, Cooperative Agreements, Gifts and Bequests**

##### **1 Agreements Revised 7/2014**

a. *Applicability.* This section applies to interagency agreements, intra-agency agreements, other transactions, cooperative agreements, and international agreements for services, supplies (including construction) and real property to the extent authorized by law. This section **does not** apply to Airport Improvement Program grants and cooperative research and development agreements, which are governed by other directives, as follows:

(1) Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989.

(2) Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program."

b. *Types of Agreements.*

(1) *General.*

(a) As discussed above, FAA has broad general authority to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA.

(b) Agreements may be made on such terms and conditions as the Administrator may consider appropriate

(i) With or without reimbursement; *and*

(ii) With another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, foreign governments, and private entities.

(c) Agreements are classified into six general categories as follows:

(i) Interagency Agreements;

(ii) Intra-agency Agreements;

(iii) Other Transactions;

(iv) Cooperative Agreements;

(v) International Agreements; and

(vi) Reimbursable Agreements and Other Transaction Reimbursable Agreements.

(2) *Interagency Agreements.* An interagency agreement is a written agreement between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where FAA agrees to receive from, or exchange supplies or services with, the other agency, and FAA funds are obligated. The requesting agency is the agency that needs the services, supplies or facilities; the servicing agency provides the services, supplies or facilities to the requesting agency. Interagency agreements under which FAA purchases services, supplies, or facilities through another Federal agency's contract is an interagency procurement, and AMS Guidance T3.8.1.A.4 "Interagency Procurement" must also be followed when placing this type of agreement.

(a) *OMB Circular A-76.* Where FAA requires the servicing agency to perform a commercial activity, the CO should conduct a cost comparison under OMB Circular A-76.

(b) *Joint Activities with Department of Defense (DOD).*

(i) DOD has the same exemptions from acquisition laws as are waived by the Administrator in the AMS when:

(A) The FAA and DOD are engaged in joint actions;

(B) DOD's contribution to the total cost of the activity is significant (more than ten (10) percent; and

(C) The purpose of the acquisition is to improve or replenish the national air traffic system. Joint actions include situations where both agencies share the same mission need and engage in joint activities to plan and implement the solution.

(ii) Where these three criteria are met, either FAA or DOD may conduct the acquisition using the policies of the AMS.

(3) *Intra-agency Agreements.* An Intra-agency agreement is a written agreement between FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an Intra-agency agreement to provide services or supplies to, or receive services or supplies from or through OST or another DOT operating administration.

All Intra-agency agreements with OST and with the John A. Volpe Transportation Systems Center (Volpe Center) must use DOT Form 2300.1a. For Volpe Center Intra-agency agreements, the statement of work must be attached to the completed Form 2300.1a. Volpe Center Intra-agency agreements are otherwise processed in PRISM in accordance with detailed business process instructions (FAA only).

(4) *Other Transactions.*

(a) An Other Transaction (OT) is typically an agreement between FAA and a non-Federal entity (either foreign or domestic) where FAA's purpose is to obtain a direct benefit that advances the agency's

mission while also providing assistance to the general public. In some cases, including multi-party transactions, an OT provides the flexibility to develop partnering relationships with industry in meeting agency objectives. For example, FAA may enter into an OT agreement with another party to jointly develop a system, which FAA may eventually purchase through a procurement contract, but the system might also be purchased by airport authorities and foreign air traffic organizations. Another instance might be the construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.

(b) In addition to joint funding agreements, in-kind contributions are allowed. The FAA is specifically authorized to use or accept the services, equipment, personnel, and facilities of non-Federal entities and to cooperate with them in the use of FAA's services, equipment, personnel, and facilities.

(c) OT agreements should be carefully drafted to avoid the inadvertent creation of a joint venture, which is separate legal entity formed to accomplish a discreet purpose. As a general rule, all parties to a joint venture agreement have joint and several liabilities for all claims arising under the agreement. In addition to other legal consequences, such agreements violate the Anti-deficiency Act and are prohibited.

(5) *Section 106 Cooperative Agreements Distinguished.* FAA also has broad authority under 49 U.S.C. 106 to enter into cooperative agreements with any Federal and non-Federal entity on such terms and conditions as the Administrator may deem appropriate. These agreements are used to provide assistance to a recipient and are more fully covered in Section 2 below.

(6) *International Agreements.*

(a) Agreements with foreign governments or quasi-governmental entities are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA's interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e).

(b) When a foreign government is a party to the transaction, the agreement is a government-to-government agreement governed by international law. The FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

(c) In negotiating agreements with foreign private civil aviation authorities and other quasi-governmental entities, FAA consults with DOS on foreign policy issues that might arise under such agreements.

(d) The program office lead or CO should coordinate with the Office of International Aviation (API), which has organizational responsibility for coordinating the agreement with the DOS and the responsible U.S. embassy, and for transmitting the agreement to the foreign entity for signature.

(e) Department of State clearance is not required for agreements with private contractors; however, the program office lead may consult with API in appropriate circumstances.

(f) *Approval of Administrator.* The FAA Administrator or designee must approve equipment purchases by a foreign government or quasi-governmental entity under any FAA prime contract.

(7) *Reimbursable Agreements and Other Transaction Reimbursable Agreements.* Agreements under which FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity is a reimbursable agreement, and AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual, Vol 4 Ch 6, and Reimbursable Agreement Standard Operating Procedure (SOP)"Creating, Executing, and Implementing Reimbursable Agreements" (FAA only) for reimbursable agreements and approved templates.

*c. Requirements.*

(1) All agreements must be in writing and should contain a clear statement of requirements, applicable terms and conditions, the legal authority for the agreement, termination and dispute resolution provisions, and where appropriate, a fund citation and payment provision.

(2) There is no requirement for competition or public announcement.

(3) *Justification.* Each agreement should be supported by a written statement describing the technical, program, or business reasons justifying the agreement. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the written rationale. Agreements valued at \$10 million or more are also subject to Chief Financial Officer (CFO) approval as required by AMS Guidance T3.2.1.4, and the justification must be included in the business case submitted as part of the CFO review package.

(4) Agreements with private entities and public authorities, other than Federal agencies, may take the form of a memorandum of understanding or memorandum of agreement. A memorandum of understanding is not legally binding on the Government, while a memorandum of agreement creates a legally binding commitment.

(5) *Content.* All agreements must be in writing and at a minimum contain:

(a) A clear statement of requirements;

(b) The term of the agreement;

(c) Procedure for modifications;

(d) The legal authority for the agreement;

(e) Termination and dispute resolution provisions;

(f) A fund citation and payment provision, if appropriate, or description of in-kind contribution of both parties; and



(g) Other terms and conditions, as appropriate, addressing such matters as intellectual property and indemnification provisions, and restoration and disposition of Government property.

(6) *Requirements for Agreements with Federal organizations.* All FAA agreements (including interagency and intra-agency agreements (except as noted below)) with Federal departments, agencies, or entities must include:

- (a) The common agreement number and the funding source;
- (b) The Treasury Account Symbol (TAS), or appropriation code, for both parties;
- (c) The Business Event Type Code (BETC) for both parties;
- (d) The effective date and duration of the agreement, to include the expiration of the funding source;
- (e) The amount and method of payment;
- (f) The Business Partner Network (BPN) number for both parties (which is equivalent to the Data Universal Numbering System (DUNS) Number for civilian agencies and the Department of Defense Activity Addressing Code (DoDAAC) for Defense agencies);
- (g) The method and frequency of performance (revenue and expenses) reporting;
- (h) If applicable, provisions for advance payments and method of liquidating such advance;
- (i) The parties' right to modify, cancel, or terminate the agreement;
- (j) A dispute resolution provision specifying that disputes must be resolved pursuant to the procedures and standards of the Business Rules for Intergovernmental Transactions described in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII;
- (k) A cancellation provision specifying that if a buyer, or requesting agency, cancels the order, the seller, or providing agency, is authorized to collect costs incurred before cancellation of the order plus any termination costs; and
- (l) Point of contact information for CO, Contracting Officer's Representative (COR), and accounting office.

All FAA Intra-agency agreements with the OST and with the Volpe Center must use DOT Form 2300.1a in accordance with (b)(3) above.

d. *Authority.*

(1) *General Authority.* 49 U.S.C. 106(l) (6) and/or 106(m) should be cited as general authority for all agreements, except where DOD exception applies, or where the agreement is with a foreign government to provide technical assistance. In Sections 49 U.S.C. 106(l) (6) and 106(m), Congress provided FAA

with specific authority to "enter into and perform such contracts, leases, cooperative agreements or other transactions as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate."

Section 106(m) also clarifies that FAA may use or accept the services, equipment, personnel, and facilities of another Federal agency, as well as a private or public entity and may do so with or without reimbursement. That section also provides specific authority to the head of another Federal agency to make the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. Additionally, the head of another Federal agency is authorized, notwithstanding any other provision of law, to transfer to, or receive from the FAA non-administrative supplies or equipment without reimbursement.

(2) *Joint Activities with DOD.* For joint activities between DOD and FAA described in subparagraph b.(2)(b) above, the legal authority in 49 U.S.C. 40121(c)(2) may also be used.

(3) *Technical Assistance Agreements with Foreign Governments.* For technical assistance agreements with foreign governments described in Section b.(6) above, the legal authority is 49 U.S.C. 40113(e).

(4) *Parallel Authorities.* The Federal Aviation Act contains other specific program authorities applicable to certain types of agreements, which may be cited as parallel authority where appropriate. Legal counsel should be consulted for additional guidance in selecting any of the listed authorities. (See Appendix Attachment 1, *Parallel Authorities.*)

e. *Format.*

(1) *Other Transaction - Memorandum of Agreement (MOA).* Where the FAA intends to create a legally binding commitment with a non-Federal entity through an "Other Transaction," a Memorandum of Agreement should be executed by the parties. Appendix D of this section contains a sample format.

(2) *Other Transaction - Memorandum of Understanding (MOU).* A Memorandum of Understanding is an agreement to agree and is not legally binding on either party. MOUs are appropriate where the parties seek only to memorialize policies and procedures of mutual concern, or describe other relationships *that are not intended to create legally binding obligations.*

(3) *Interagency Agreement, Intra-agency Agreement, and Cooperative Agreement.* Appendix D of this section contains sample formats for these types of agreements (except for Intra-agency agreements with OST and with the Volpe Center that must use DOT Form 2300.1a as specified above in lieu of using the sample format for Intra-agency agreements).

(4) *Reimbursable Agreements (where FAA is the servicing agency)* AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual and Reimbursable Agreement SOP for reimbursable agreements and approved templates (FAA only).

f. *Funding.*

(1) *General.* Funds must be obligated to an agreement within the period of their availability consistent with the purposes of the appropriation. Additionally, when FAA funds are obligated under an agreement with a servicing agency, the obligation maintains the same impact and restrictions when it is transferred to the servicing agency. For example, funds from the FAA's Operations, RE&D and F&E accounts may be used only for the purposes of the appropriation and do not lose their character once transferred to the servicing agency. Likewise, when FAA is the servicing agency, an obligation against an appropriation of a requesting agency maintains the same impact and restrictions as the appropriation of origin.

(2) *Economy Act.* Where the Economy Act is cited, funds must be obligated by the servicing agency **prior to expiration**, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated by the servicing agency must be returned to the requesting agency prior to their expiration date.

(3) *Military Interdepartmental Purchase Request (MIPR).* The DOD uses MIPRs as the primary document to order goods or services from the FAA. The MIPR includes a description of the work or services DOD is requesting from the FAA, the unit price, the total price, and a fund cite. The FAA CO or other FAA official designated by their Directorate may accept the MIPR on behalf of the FAA. The person authorized to accept the MIPR should ensure the MIPR contains a clear statement of requirements before accepting the MIPR on behalf of the FAA. The DOD may use MIPR (DD Form 448) and Acceptance of MIPR (DD 448-2) to order goods from FAA. The Acceptance of MIPR Form specifies whether the identified work will be provided through reimbursement (Economy Act) or by the direct citation of funds (based on other authority) or a combination of both. Where FAA agrees to an MIPR based on reimbursement pursuant to the Economy Act, then the rules in subparagraph f.(2) above apply. If FAA accepts the funds on a direct cite basis, DOD will not record the funds as obligated until FAA provides DOD with a contract or other obligating document that cites the funds.

(4) *Other Situations.* Where the Economy Act is not cited as authority for FAA, funds are obligated at the time FAA signs the agreement and places funds on the agreement.

(5) *Disposition of Funds Received.* Funds received under an Agreement shall be credited to the appropriation from which the expenses were incurred, unless otherwise required by one of the specific program authorities cited in Paragraph D, Appendix Attachment 1, *Parallel Authorities*, or current and prior appropriation acts.

*g. Approval and Execution.*

(1) *Review and Approval.* The Administrator has delegated authority to award contracts, cooperative agreements and other transactions to the FAA Acquisition Executive (FAE); provided that the Administrator is given an opportunity to review any grant or cooperative agreement (other than those awarded under the preexisting authority contained in 49 U.S.C. 44912, 44505, and 47101, et seq.), or other transaction with a total cumulative value equal to, or greater than \$10 million, or which is of significant congressional interest.

The FAE subsequently redelegated this authority to the Chief of Contracting Office (COCO) for headquarters, service areas, and centers. The COCO may redelegate the authority to other qualified individuals, such as regional administrators, center directors, and purchase card program manager. Except for the purchase card program manager, the individuals receiving delegated authority from the COCO may not redelegate their authority.

The following factors, which are not all inclusive, typically indicate that the Administrator's review is required:

- (a) The total cumulative value equals or exceeds \$10 million; or
- (b) The total cumulative value is less than \$10 million, but the following conditions are present:
  - (i) The transaction is the subject of one or more congressional inquiries; or
  - (ii) The transaction is described in a statute, committee report, or agency budget; and
  - (iii) Either the schedule, performance, or estimated cost baseline will be significantly breached by 20% or more.

(2) *Execution of the Agreement.* The CO, or other employee who has been delegated such authority, executes the agreement on behalf of the FAA, provided that the estimated dollar value of the agreement does not exceed that individual's delegated authority.

h. *Legal Review.* All agreements require legal review prior to execution. Ideally, legal counsel should be involved at the early stages of the award process to assist with selection of the appropriate legal instrument, drafting appropriate terms and conditions, and other legal issues. AGC-7 in consultation with AGC-500 is responsible for providing legal review of all international government to government agreements and agreements with international quasi-governmental entities. In the Europe, Africa and Middle East (EAME) Region, AEU-7 provides legal review for agreements with foreign governments and quasi-governmental entities. AGC-500 and regional counsel are responsible for providing legal review on all other agreements and will consult with AGC-7 on any agreements that may have foreign policy implications.

i. *Chief Financial Officer Approval.* Agreements valued at \$10 Million or more must be approved by the Chief Financial Officer (CFO) as required by AMS Guidance T3.2.1.4. The package submitted for CFO approval must include a justification as described in paragraph (c)(3) above as part of the business case. The justification must include a market analysis and supporting documentation for all alternatives considered.

j. *Disputes.* Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see e.g. 49 U.S.C. 46110).

## 2 Section 106 Cooperative Agreements Revised 4/2013 4/2017

### a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

### b. *Authority.*

(1) *General.* In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform ...cooperative agreements...as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(l)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants.* Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

### c. *Definitions.*

(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant.* A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

### d. *Appropriations.*

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) ~~Circulars~~Guidance*. Several OMB Circulars ~~impose~~imposed restrictions on projects funded with Federal funds. These Circulars A-21, A-87, A-102, A-110, and A-122 have been superseded by OMB Guidance "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> ("OMB Uniform Guidance").

In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow ~~the guidance of these circulars~~this OMB Uniform Guidance to the extent ~~such standards are~~this OMB Uniform Guidance is consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

~~(a) Office of Management and Budget Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."~~

~~(i) OMB Circular A-110 establishes pre-award and post-award standards for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The circular does not apply to such awards or agreements where a statute specifically prescribes policies or specific standards that are inconsistent with the circular.~~

~~(ii) The circular defines an award as "financial assistance that provides support or stimulation to accomplish a public purpose." Awards include grants and other agreements in the form of money or~~

~~property in lieu of money by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services in lieu of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to be entered into and administered under procurement laws and regulations.~~

~~(b) OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments. (Note that sub-awards made by State and local governments to organizations covered by OMB Circular A-110 are covered by Circular A-110).~~

~~(c) Allowable Costs. The following OMB Circulars describe basic cost principles applicable to the organization incurring the cost. (a) OMB Circular A-87, Cost Principles for State Local and Indian Tribal Governments, (b) OMB Circular A-122, Cost Principles for Non-profit Organizations, excluding educational institutions and other organizations specified in the circular, and (c) OMB Circular A-21, Cost Principles for Educational Institutions.~~

~~(d) Treatment of Commercial Organizations. The FAA may extend the coverage of OMB Circular A-110 to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations.~~

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions: ~~(Examples of these provisions and other clauses are included in Appendix F. OMB Circulars A-110 and A-102 also provide additional guidance for cooperative agreements funded by appropriated funds.)~~

- (1) A clear statement of purpose,
- (2) The legal authority for the agreement,
- (3) A description of the intended beneficiary,
- (4) A description of the level of FAA involvement,
- (5) The term of the agreement,
- (6) Authority and procedure for modifications,
- (7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,
- (8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,
- (9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,
- (10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,

- (11) FAA's right to audit for a stated period of time,
- (12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.)
- (13) Small business opportunities,
- (14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),
- (15) Dispute resolution,
- (16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)
- (17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

- (1) Technical merit and program value,
- (2) Cost/contribution of the parties,
- (3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

- (1) The purpose of the cooperative agreement,
- (2) The expected benefit to the recipient and the general public,
- (3) FAA's substantial involvement in performance of the activity, and
- (4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive (ACQ-1), who is authorized to redelegate this authority, as appropriate.

### **3 Gifts and Bequests** Revised 7/2006



Under 49 U.S.C. 326, the Administrator has the authority to accept any conditional or unconditional gift or donation of money or property, real or personal, or of services for the FAA. Property accepted under this authority and proceeds from the sale of that property must be used, as nearly as possible, under the terms of the gift. FAA Order 2700.20A implements the Administrator's gift authority and must be consulted in determining whether a transaction should be processed as a gift. Typically, a gift is characterized by the following criteria: (1) a unilateral transfer to the Government, with or without conditions; (2) the FAA is not obligated to provide anything in return; and (3) there is no continuing relationship with the donor. For example, an airport offers to purchase and provide the FAA with a system such as a MALSR, provided that the FAA places it at that airport, and the FAA is not required to provide anything in return, but is required to maintain the equipment. In that situation, the airport is making a gift and the organizational unit must process the transaction using the process of FAA Order 2700.20A. If the airport also requires FAA to service its MALSR's in return, a procurement contract should be used as the FAA would be procuring a system by providing services as consideration. If the airport retains title to the MALSR, but the FAA would be responsible for its maintenance, the agreement should be an "other transaction."

#### **4 Interagency Procurement Revised 10/2010**

a. Applicability. This section applies to interagency procurement of services, supplies and real property. An interagency procurement is a type of interagency transaction in which one Federal agency (requesting agency) uses the contract vehicles and/or contracting services of another Federal agency (servicing agency) or agencies in order to obtain supplies, services, or real property. This section does not apply to orders placed under the General Service Administration's Federal Supply Schedules contracts, which are covered by AMS Policy 3.8.3 and AMS Guidance T3.8.3 "Federal Supply Schedules."

b. Requirements.

(1) Procurement Laws and Directives. Where FAA procures services, supplies or real property through another Federal agency contract or uses its contracting services, FAA is subject to the procurement laws applicable to that agency. In a similar vein, unless authorized by statute or regulation, other Federal agencies may not conduct acquisitions using the FAA's exemptions from acquisition laws. Joint activities with DOD as defined in AMS Guidance T3.8.1.A.1(b)(2) may be conducted using FAA AMS policy and procedures.

(2) Best Interest Determination. Each interagency procurement in which FAA is the requesting agency must be supported by a written best interest determination. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the determination. If the procurement is valued at \$10 million or more and requires CFO review and approval under AMS Guidance T3.2.1.4, the best interest determination must be done as part of the business case included in the CFO review package. The best interest determination must address the following elements:

(a) Suitability. Explain how use of the servicing agency's contract vehicle likely to result in a quality outcome that meets FAA's requirements and schedule, taking into account planning considerations described in AMS Policy 3.2.1 "Procurement Planning." For procurements valued

at \$10 million or more, the determination must include information on the market analysis conducted.

(b) Value. Explain how use of another Federal agency's contract vehicle the most efficient and cost-effective means of procuring the services, supplies, or real property, as opposed to using a current FAA contract vehicle or placing a new contract directly with a vendor. Any servicing agency fees should be taken into account in assessing value.

(c) Expertise. Explain how the procurement team, including both contracting and program personnel, have the appropriate time, training, and expertise to effectively place and administer the contract work. The procurement team would consist of FAA personnel for a direct procurement - those in which FAA places an order directly with the contractor on another Federal agency's contract. The procurement team would consist of servicing agency personnel, possibly working in conjunction with FAA personnel, for an assisted procurement – those in which the servicing agency provides contracting support (such as conducting a task order competition) in addition to agreeing to allow FAA to use its contract(s).

(3) Templates. When FAA is the requesting agency in an assisted procurement, T3.8.1.D.2, Attachment 2, Sample Interagency Agreement, must be used. The CO must ensure the roles and responsibilities of the respective parties are described clearly in the agreement, including specifics on tasks such as performance monitoring, inspection and acceptance, approval of invoice payments, and restoration and disposition of property. For direct procurements, no interagency agreement document is required, but COs and program office personnel must use any templates required by the servicing agency in placing the order.

(4) Unsolicited Proposals. An interagency procurement may be used for acceptance of an unsolicited proposal, in addition to use of a single source contract action as described in AMS Guidance T3.2.2.6.A.5. Unsolicited proposals must be considered and processed in accordance with AMS Policy 3.2.2.6 and AMS Guidance T3.2.2.6 “Unsolicited Proposals,” but if an interagency procurement is used instead of a single source action, the interagency procurement best interest determination would replace the single source justification required under T3.2.2.6.A.5(b)(2).

(5) Review and Approval. Review and approval requirements for interagency procurements are the same as those for other FAA procurements.

(6) Administration. The CO administering an agreement for an assisted interagency procurement must ensure that the terms and conditions agreed to by the parties are reviewed at least annually for agreements that exceed one year. The FAA review should involve the CO, program office, and other technical and legal experts as necessary. The review should consist of a reexamination of the agreement, as supported by the best interest determination, in order to assess whether the agreement is meeting the needs of FAA. If the agreement is not meeting FAA's needs, the review team should discuss these issues with the other party and amend or terminate the agreement as appropriate and allowed by the terms of the agreement. The annual assessment must be signed by the FAA CO and the reviewing official of the other party and documented in the agreement file.

(7) Documentation. COs entering into an agreement for an assisted interagency procurement must use the Interagency Agreement File Checklist in the FAST Procurement Forms when documenting the agreement file.

c. Authority.

(1) 49 U.S.C. 106(l) (6) should be cited as general authority for all assisted interagency procurement agreements.

(2) Where the FAA seeks to obtain supplies or services through another agency's prime contract and to make advance payments, the Economy Act, 31 U.S.C 1535 should be cited as additional authority for FAA. In most cases, the Economy Act also provides authority for the other Federal agency.

## **5 Reimbursable Agreements and Other Transaction Reimbursable Agreements**

**Revised 7/2014**

a. *Applicability.* This section applies to reimbursable agreements for services, supplies and facilities where FAA is the servicing agency and another Federal agency or non-Federal entity is the requesting agency or the sponsor. There is no obligation of FAA funds associated with reimbursable agreements. This process does not apply to Small Scale Reimbursable Agreements (SSRAs), which are defined as reimbursable agreements with a total estimated value of less than \$30,000.

b. *Requirements.*

(1) When FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity, FAA is essentially a contractor and subject to the terms and conditions of the requesting agency. When possible, FAA should use FAA-approved templates. If not possible, FAA should ensure that the other (sponsor) Federal agency's or the non-Federal entity agreement addresses the content required by T3.8.1A1.c(5). In addition to the requirements of AMS for reimbursable agreement, each CO must be familiar with and adhere to the requirements of FAA Order 2500.35D, the FAA's Financial Manual, and the FAA Reimbursable Agreement SOP referenced in T3.8.1A1.b(7).

(2) *Business Case Determination.* Each reimbursable agreement in which FAA is the servicing agency must be supported by a written business case determination that it is in the best interest of the agency to provide the service, supply or facility. The business case must also identify the benefits derived by FAA. This determination must be signed by the director of the program office, or their designated representative, and address the policy contained in Section 9 of FAA Order 2500.35D. The CO must ensure that one has been completed but determination as to whether or not the rational basis is appropriate and sufficient and whether to proceed with the reimbursable agreement lies with ABU. The CO will contact ABU with any concerns, and ABU will address them as needed with the program office.

c. *Reimbursable Agreement Process.*

(1) The program office will input a zero dollar purchase request (PR) into the PRISM system to initiate a CO's involvement. See No Cost Requisitions and Awards (FAA only).

(2) The CO coordinates with the program official based on their PR and business case to evaluate the requirement that is needed by the requesting agency and the reimbursable agreement template chosen by the agreement coordinator.

(a) If using a modifiable agreement template, the CO will work with the agreement coordinator to determine any unique terms and conditions.

(b) If the project sponsor/requesting agency requires that FAA use their reimbursable agreement template, then the CO will ensure compliance with T3.8.1A1.c(5) and that the FAA as the servicing agency has the ability to comply with the requesting agency's requirements.

(3) If there are any assets to be acquired as part of the reimbursable agreement that must be capitalized, the program office/agreement coordinator is responsible for identifying these assets in Section 4 of the reimbursable agreement. If Section 4 identifies assets, the CO must ensure that a copy of the agreement is provided to the Regional Capitalization Team and comply with FAA standardized asset capitalization procedures.

(a) Actual asset value may not be cited in the reimbursable agreement at time of execution; however, document must at least identify the asset.

(b) Software is an asset that must be capitalized.

(4) The program office is responsible for all aspects of pricing their services, supplies or facilities to ensure full reimbursement. Any negotiations between the requesting agency and the servicing agency will be conducted by program officials, and not the CO. The CO will need to check the Reimbursable Datasheet specifically Section 3, and ensure that the agreement amount and overhead percentage amount match the pricing on the reimbursable agreement. If the data sheet states that the overhead has been waived, the CO should access the reimbursable tool to validate that a properly executed "Reimbursable Agreement Waiver Request Form" has been uploaded. Since there is no obligation of dollars by the FAA, the role of the CO is to document the agreement made between the requesting and servicing agencies.

(5) As the servicing agency, the CO will sign the reimbursable agreement first and then forward to the requesting agency for final signature. The CO must have specific reimbursable agreement warrant authority for the total estimated potential value of the reimbursable agreement to sign the agreement even though the CO is not obligating dollars. Upon receipt of a fully executed reimbursable agreement from the requesting agency the CO will "award" the document in PRISM and annotate in the "notes" section the corresponding reimbursable agreement number assigned by the reimbursable tool and distribute the document to all applicable parties.

*(6) Reimbursable Agreement Administration.*

(a) *Invoicing and Payment.* The Accounting Office prepares the invoice and sends to the requesting agency for payment according to the terms and conditions in the reimbursable agreement. If the requesting agency's payment is more than 30 days past due, the program official notifies the CO and the CO contacts the requesting agency for payment. If no payment is received in the next 30 days, the issue is raised to successive levels of management within the contracting office for resolution.

(b) *Funding Log.* The CO is responsible for maintaining, as part of the contract file, a funding log to track all funds received from sponsor, either lump sum or incremental funding distribution. Acceptance of these funds will be executed by the CO. *The Program office is also responsible for tracking the funds.*

(c) *Performance.* The program office is responsible for monitoring performance. If the FAA is unable to fulfill the terms of the reimbursable agreement, the program office must notify the CO to initiate discussions with the requesting agency and possible termination of the agreement.

(d) *Modifications.* For reimbursable agreements the FAA as a servicing agency is acting in the capacity of a contractor. If a modification is required to the reimbursable agreement the requesting agency will initiate the modification. However, if the requesting agency asks the CO of the servicing agency to write the modification the CO will sign it, and forward to the requesting agency for CO signature. In no event will the FAA CO obligate or deobligate requesting agency funds.

(e) *Incremental Funding, Overruns, and Other Funding Notifications.* The program office is responsible for tracking all expenditures and requesting additional funds as required. As expenditures near 75% of available sponsor funding, the program office will notify the sponsor agency to ensure timely receipt of funding to prevent overruns.

(f) *Termination.* The servicing agency CO will be notified in the event any contract terms have been breached which may result in termination.

(g) *Closeout.* No charges may be incurred after the period of performance has expired. When performance is complete the CO will receive notice by email through the reimbursable tool. Included in the tool will be a closeout form that has already been validated by all responsible parties in the process. The CO will contact the requesting agency/sponsor by email to see if they have received all services, supplies or facilities as stated in the reimbursable agreement. When the CO receives an email response, then they can concur in the reimbursable tool. AMZ will send out an email notice through the reimbursable tool when the reimbursable agreement has been closed out.

At this point the CO will go into PRISM and close the corresponding PRISM document.

(h) There is no file records retention requirement with reimbursable agreements as the reimbursable tool is the system of record and must contain all official documents.

## B Clauses

[view contract clauses](#)

## C Forms

[view procurement forms](#)

## D Appendix

### 1 Attachment 1 - Parallel Authorities

**49 U.S.C. 40108** - authorizes the FAA to establish training schools for FAA officers and employees. Authorizes attendance of officers and employees of other Federal entities, governments of foreign countries, and individuals from the aeronautics industry. Authorizes the Administrator to "*require payment or transfer of amounts or other consideration to offset the additional cost*" of any of "*those officers, employees, or individuals.*" **Amounts received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.**

**49 U.S.C. 40113(e)** - authorizes the Administrator to provide safety-related training and operational services to foreign aviation authorities with or without reimbursement. **Funds received shall be credited to the appropriation from which the expenses were incurred.**

**49 U.S.C. 44502 (a)(2)** - authorizes the Administrator to make an agreement with an airport owner or sponsor (includes a private owner of a public use airport) so that the owner or sponsor will provide site preparation work associated with acquiring, establishing, or improving an air navigation facility and be paid or reimbursed from the appropriated amounts (under section 48101(a)).

**49 U.S.C. 44502(d)** - authorizes the FAA to provide, by regulation, assistance, and sale of fuel, oil, equipment and supplies to an aircraft in an emergency. **The cost of the assistance may be credited to the appropriation from which the cost was paid.**

**49 U.S.C. 47301 - 47305** - provides authority to acquire, establish and construct airport property and airway property (except meteorological facilities) in foreign territory, authority to transfer property,

train foreign citizens, accept payment from a government of a foreign country or international organization for facilities or services provided the government or organization, and **authority to credit funds so received to current appropriations.**

**49 U.S.C. 44903(c)** - provides authority to the Administrator to authorize an airport operator to use on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel.

**49 U.S.C. 44505(d)** - authorizes cooperative agreements on a cost-shared basis for research, engineering and development with Federal and non-Federal entities.

**49 U.S.C. 44912** - authorizes grants and cooperative agreements for research technologies to counter terrorist acts against civil aviation.

**49 U.S.C. 44913** - authorizes grants under the Explosive Detection K-9 Team Training Program.

**49 U.S.C. 44935(c)(2)** - authorizes reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs.

**49 U.S.C. 47104** - authorizes project grants for airport development from the Airport and Airway Trust Fund.

**49 U.S.C. 47151** - authorizes the Administrator to give an interest in surplus airport property to a State, political subdivision of a State, or tax supported organization. Such surplus property may be used by the U.S. Government without charge if the President declares a national emergency.

## **2 Attachment 2 - Sample Interagency Agreement Revised 10/2007**

### **INTERAGENCY AGREEMENT**

#### **BETWEEN**

**THE FEDERAL AVIATION ADMINISTRATION (FAA)**

**and**

***[CO insert name of other agency] [CO***

***insert agreement number]***

#### **ARTICLE I. PARTIES**

***[CO also insert for both parties: Business Partner Network (BPN) number; Treasury Account***

*Symbol (TAS) or appropriation code; and Business Event Type Code (BETC)]*

## **ARTICLE 2. SCOPE**

### **a. Purpose:**

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [CO insert name of the other agency] is to [CO insert description of the work to be performed.]

b. Specific goals and objectives to be accomplished. [CO describe the goals and objectives to be accomplished.]:

c. Roles and responsibilities. [CO describe roles and responsibilities of the parties.]

## **ARTICLE 3. EFFECTIVE DATE and TERM**

This Agreement is effective on the date of the last signature and shall continue in effect until [CO insert completion date of the interagency agreement], or until earlier terminated by the parties, as provided herein.

## **ARTICLE 4. DELIVERY/PERFORMANCE**

Work shall be accomplished according to the following schedule: [CO

insert work schedule to be followed in performing the work.]

## **ARTICLE 5. REPORTING REQUIREMENTS**

[CO describe method and frequency of reporting requirements, e.g. performance (revenue and expenses) reporting, Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.]

## **ARTICLE 6. RELEASE OF TECHNICAL DATA**

No information, oral or written, concerning the results or conclusions made pursuant to this Agreement shall be published or released to the public without the prior written approval of the FAA Contracting Officer.

## **ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of the Federal Aviation Act of 1958, 49 U.S.C. 106(1) and 106(m), and 31 U.S.C. 1535.

*[Note 1. If this is a joint activity with Department of Defense (see T.3.8.1.b.2, Joint Activities with DOD), also cite 49 U.S.C. 40121(c) 2.]*



## ARTICLE 8. POINTS OF CONTACT

FAA Program Office/Technical Officer

\_\_\_\_\_

FAA Contracting Officer

\_\_\_\_\_

FAA Accounting Office

\_\_\_\_\_

Federal Agency

\_\_\_\_\_

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

## ARTICLE 9. FUNDING AND PAYMENT

a. Funds in the amount of \$[*CO insert amount*] are hereby obligated to this Interagency Agreement. Obligation is chargeable to Appropriation Code:

[*CO insert appropriation code here*] [*CO insert PR number here*]

[*CO insert information about expiration date of funding*]

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

\_\_\_\_\_

\_\_\_\_\_

Federal Aviation Administration

**c. Method of Payment**

[CO insert description of method of payment]

d. Upon termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

*[Note 2. When the Economy Act is cited as authority, funds must be obligated by the servicing agency prior to their expiration, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated must be returned prior to their expiration date.]*

*[Note 3. Describe any other funding limitations, e.g. limits on the use of FAA funds for a multi-year contract.]*

*[Note 4. If applicable, insert provisions for advance payments and method of liquidating the advance]*

## **ARTICLE 10. LIMITATION OF FUNDS**

The FAA's liability to make payments to [CO insert name of other agency] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

## **ARTICLE 11. APPROVAL OF PRIME CONTRACT/MODIFICATIONS**

*[Note 5. If the FAA will obtain products or services through the other Federal agency's contractor, describe the role of the FAA Contracting and Legal Offices. Typically, the FAA reviews the underlying contract and modifications, drafts the statement of work and provides other technical assistance prior to award. FAA legal reviews the underlying contract to determine if it is in compliance with FAA specific statutes and funding limitations. The following is suggested:]*

Prior to executing any contract or modification to an existing contract in order to fulfill the requirements of Article [CO insert Article Number] of this Agreement, the [CO insert name of other agency] agency shall provide the FAA Contracting Officer with a copy of the contract or modification. The written concurrence of the FAA Contracting Officer shall be obtained by [CO insert name of other agency] prior to contract award, or execution of the modification.

## **ARTICLE 12. CHANGES, MODIFICATIONS**

a. Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the Contracting Officer of [CO insert name of other agency] Agency, or their duly authorized representatives acting within the scope of their authority. No oral statement by any

person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. All requests for interpretation or modification shall be made in writing.

b. The FAA Technical Officer identified in Article 8 is responsible for the technical administration of this Agreement. The FAA Technical Officer is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without the written consent of the FAA Contracting Officer.

### **ARTICLE 13. TERMINATION**

Either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, plus termination costs if any, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[CO will insert here any additional termination requirements that may apply, e.g. disposition of data, return, or other disposition of property to either party.]

### **ARTICLE 14. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- a. The Agreement
- b. The Attachments

### **ARTICLE 15. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

[If appropriate, the CO may include specific provisions governing the release of data developed under the Agreement.]

### **ARTICLE 16. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. If the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved pursuant to the procedures and standards of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII.

**AGREED:**

Federal Agency

Federal Aviation Administration

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**3 Attachment 3 - Sample Intra-agency Agreement Revised 10/2007**

**INTRA-AGENCY AGREEMENT BETWEEN  
NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA) AND  
DEPARTMENT OF TRANSPORTATION (OST)**

The Northwest Mountain Video Productions group (ANM Video Productions) and the Department of Transportation (OST) mutually agree to the following:

**FAA RESPONSIBILITIES**

The responsibilities of ANM Video Productions under this agreement include but are not limited to the following:

- a. Provide a broadcast quality video production including storyboard construction, scripting, taping, editing, and graphics/animation not to exceed 20 finished minutes. The video (1DOT Safety Video) shall be approximately 15 minutes in length and depict safety messages provided by the various modals of the Department of Transportation.
- b. Completion of video storyboard by August 15, 1998.
- c. Completion of video script by November 25, 1998.
- d. Completion of location taping with professional talent by December 9, 1998.
- e. First cut video completion by January 15, 1999.
- f. Delivery of the finished product, with a BetaCam SP master (9 master tapes total) for distribution to OST and each participating modal on or before January 31, 1999.
- g. Distribution of one VHS format duplicate to OST and each participating modal administration.

**DOT RESPONSIBILITIES**

The Department of Transportation (OST) will reimburse ANM Video Productions (FAA) for the total cost of the product, including master tapes and VHS copies, in the amount of \$50,000.00.

Accounting Code [*CO to insert accounting code here*]

**Billing Address**

\_\_\_\_\_

\_\_\_\_\_

NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA)	DEPARTMENT OF TRANSPORTATION (OST)
---	---------------------------------------

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity Revised 10/2007**

**MEMORANDUM OF AGREEMENT BETWEEN**

**FEDERAL AVIATION ADMINISTRATION (FAA)**

**AND**

**[CO insert Name of non-Federal Party (Parties)]**

**ARTICLE I. PARTIES**

The parties to this Agreement are the Federal Aviation Administration (FAA) and [*CO insert name of Non-Federal party*]

**ARTICLE 2. SCOPE**

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [*CO insert name of Non-Federal party*] is to [*CO insert description of purpose of the agreement*].

b. Specific goals and objectives to be accomplished:

c. Management of the project:

d. Roles and responsibilities:

Parties are bound by a duty of good faith and best effort in achieving the goals of the Agreement e.

Contributions of the Parties:

*[CO describe the contributions of each party, e.g. cost-share arrangement, in-kind contributions and total estimated project cost for both parties. Describe any limitations, e.g. risk of loss for in-kind contributions, responsibility for repairs, refurbishment, and disposition.]*

f. Type of Agreement:

This Agreement is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

### ARTICLE 3. EFFECTIVE DATE and TERM

The effective date of this Agreement is the date on which it is signed by the FAA or [*CO insert name of non-Federal party*], whichever is later. This Agreement shall continue in effect until [*CO insert completion date*] or until earlier terminated by the parties as provided herein.

### ARTICLE 4. MILESTONES

Work shall be accomplished according to the following milestones. [*CO insert information in the following spaces.*]

*Note. This schedule should be tailored as appropriate.*

<u>Milestone</u>	<u>Completion Date</u>	<u>Responsible Party</u>
Sign Agreement	_____	_____
Detailed SOW	_____	_____
Subcontract Selection(s)	_____	_____

Subcontract Approval(s) \_\_\_\_\_  
Subcontract Award(s) \_\_\_\_\_  
Project Completion \_\_\_\_\_

## ARTICLE 5. REPORTING REQUIREMENTS

[CO describe here reporting requirements, e.g. Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.]

## ARTICLE 6. INTELLECTUAL PROPERTY

### a. Rights in Data

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

- (1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,
- (2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

### b. Rights in Inventions

The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights – Retention by the Contractor (Short Form).

*Note. This intellectual property provision is an example. Parties should carefully evaluate and include appropriate intellectual property provisions depending on the nature of the Agreement. For example, the FAA may wish to disclose technical data to the public for commercial or other purposes, which is not covered under the*

*government purpose license described herein. Additionally, the Bayh-Dole Act, which governs rights in inventions made under funding agreements does not apply to agreements under the FAA's "other transaction" authority)*

## **ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

## **ARTICLE 8. POINTS OF CONTACT**

FAA Program Office/Technical Officer

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Non-FAA Party

\_\_\_\_\_

FAA Contracting Officer

\_\_\_\_\_

\_\_\_\_\_

## **ARTICLE 9. FUNDING AND PAYMENT**

a. The FAA will contribute \$ [*CO insert amount*] as its share of the cost to perform this Agreement. The [*Co insert name of non-Federal party*] will contribute [*CO describe schedule of in-kind contributions, if any*]. Funds in the amount of \$[*CO insert amount*] are hereby committed for the term of this Agreement. Obligation is chargeable to Appropriation Code [*CO insert appropriation code*] in procurement request number[*CO insert number*].

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

\_\_\_\_\_



---

c. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

#### **ARTICLE 10. LIMITATION OF FUNDS**

The Government's liability to make payments to [*CO insert name of non-Federal party*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

#### **ARTICLE 11. APPROVAL OF SUBCONTRACTORS**

The Contracting Officer shall be reasonably notified in advance of entering into any subcontract. Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain the Contracting Officer's written consent before placing any subcontract.

#### **ARTICLE 12. AUDITS**

The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy.

#### **ARTICLE 13. CHANGES, MODIFICATIONS**

Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the [*CO identify representative or designee*] of [*CO insert name of non-Federal party*]. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

#### **ARTICLE 14. TERMINATION**

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[CO should include any additional termination requirements that may apply, e.g. return of property to either party or other method of disposition].     -

## **ARTICLE 15. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- (a) The Agreement,
- (b) The Attachments.

## **ARTICLE 16. CONSTRUCTION OF THE AGREEMENT**

This Agreement is an "other transaction" issued under 49 U.S.C 106 (1) and (m) is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.

## **ARTICLE 17. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by [*CO describe internal dispute resolution process, e.g. management of either party, or an oversight committee*]. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

## **ARTICLE 18. WARRANTIES**

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

## **ARTICLE 19. INSURANCE**

[*CO insert name of non-Federal party*] shall arrange by insurance or otherwise for the full protection of [*CO insert name of non-Federal party*] from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by [*CO insert name of non-Federal party*], its employees, or contractors, or any third party acting on its behalf. [*CO insert name of non-Federal party*] agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement.

## **ARTICLE 20. LIMITATION OF LIABILITY**

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of [CO insert amount] funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

## **ARTICLE 21. LOWER TIER AGREEMENTS**

[CO insert name of non-Federal party] shall include Articles [CO insert article numbers] suitably modified in all lower tier Agreements, regardless of tier).

## **ARTICLE 22. CIVIL RIGHTS ACT**

[CO insert name of non-Federal party] shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.

## **ARTICLE 23. OFFICIALS NOT TO BENEFIT**

AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are attached hereto and incorporated by reference into this Agreement.

## **ARTICLE 24. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

### **AGREED:**

TBD

Federal Aviation Administration

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU)**

**Revised 10/2007**

### **MEMORANDUM OF UNDERSTANDING THE FEDERAL AVIATION ADMINISTRATION**

## AND XYZ

### **1. Parties**

The parties to this Memorandum of Understanding ("MOU") are the Federal Aviation Administration ("FAA") and XYZ.

### **2. Objectives**

The objectives of this MOU are as follows:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

### **3. Responsibilities of the Parties**

(a) FAA

\_\_\_\_\_

(b) XYZ

\_\_\_\_\_

### **4. Funding**

**No funds are obligated under this MOU.** Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.

### **5. Warranties**

Neither the FAA nor *[Insert name of other party]* makes any express or implied warranty as to any matter arising under this MOU.

### **6. Protection of Confidential/Privileged Information**

Each party shall take appropriate measures to protect proprietary, privileged or otherwise confidential information obtained as a result of its activities under this MOU.

### **7. Construction**

The parties understand and agree that this Memorandum of Understanding does not confer any legal rights, duties or obligations on either party and is not subject to dispute in any forum. Neither party is authorized or empowered to act on behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU.

### **8. Effective Date/Term/Termination**

This MOU shall be effective on the date of the last signature of the parties and shall remain in force until terminated by mutual agreement or unilaterally by either party upon 30 days notice to the other party.

**9. Authority**

The authority for this MOU is 49 U.S.C. 106 (f)(2)(A) and 106(l) and (m).

**XYZ**

**Federal Aviation Administration**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**6 Attachment 6 - Sample Section 106 Cooperative Agreement Revised 4/2013**

**COOPERATIVE AGREEMENT  
DTFAOI-98-C-00000  
Between  
ABC AIRLINES, INC. and  
the  
FEDERAL AVIATION ADMINISTRATION**

*Cooperative Agreement Letter*

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I - 98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

\$XXXXXXXX

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described

in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

\_\_\_\_\_  
For ABC Airlines, Inc. For the FAA

\_\_\_\_\_  
Name Name

\_\_\_\_\_  
Date of Signature Date of Signature

## ***COOPERATIVE AGREEMENT***

***DTFAOI-98-C-00000***

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## **1. GENERAL PROVISIONS A.**

### ***Parties to the Agreement***

*The parties to this Cooperative Agreement (hereinafter the "Agreement") are as follows:*

- 1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*
- 2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

### ***B. Effective Date and Milestones***

*The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:*

#### *Milestone Completion Date Responsibility*

*Sign Cooperative Agreement 4/98 FAA, Lead Carrier*

*Convene Initial CAMCOM N/A Lead Carrier Submit*

*CAPS Development Plan 1/98 Lead Carrier Submit*

*Initial Monthly Progress Rpt\* Lead Carrier Submit*

*Initial Budget Rpt\* Lead Carrier*

*Approve CAPS Development Plan 4/98 FAA Commence*

*All CAPS Installations 3/98 Lead Carrier Complete All*

*CAPS Installations Lead Carrier Conduct Alpha Testing*

*1/98 Lead Carrier*

*Conduct Beta Testing 3/98 Lead Carrier*

*Commence Full Operations 7-98 Lead Carrier*



*\* Monthly reports thereafter*

### **C. Authority**

*This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to enter into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.*

## **II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT**

### **A. Background**

*During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening*

*(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.*

### **B. Objectives**

*The objectives of this Agreement are to achieve:*

- (1) Successful implementation of the basic CAPS program, as defined herein.*
- (2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

### **C. Scope**

*Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.*

*CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.*

*Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.*

#### ***D. Coordination with Related Programs***

*The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.*

### ***III. CONTRIBUTIONS OF THE PARTIES***

*The contributions of the parties to this Agreement are as follows:*

#### ***A. FAA Contributions***

##### ***1. Cash Contributions***

*The FAA will provide cash contribution to the Lead Carrier as shown below.*

##### ***2. In-kind Contributions***

*The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:*

---

---

##### ***3. Other Contributions***

*In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.*

#### ***B. Lead Carrier Contributions***

*Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.*

#### ***C. Limitation of Funds***

*Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed \$xxxxxx. Except as expressly stated in this Agreement, the*

*FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.*

#### ***D. Reimbursement of Costs***

*The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:*

- *Fifty-percent (50%) of total amount \$xxxxxx.*
- *Fifty-percent (50%) of total amount \$xxxxxx.*

*These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.*

*Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.*

#### ***E. Selection of Alternatives***

*The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.*

### ***IV. TECHNICAL DIRECTION***

*The parties agree on the following organization and roles for management of this Agreement.*

#### ***A. Management Structure***

*The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.*

*Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA."*

#### ***B. FAA Role***

*The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.*

### ***V. REQUIRED SUBMISSIONS TO THE FAA A.***

#### ***CAPS Functional Specification***

*Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.*

#### ***B. CAPS Operational Readiness Plan***

*Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.*

#### ***C. CAPS Quality Assurance Plan***

*Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.*

#### ***D. CAPS Project Plan***

*Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.*

#### ***E. CAPS Monthly Project Report***

- ☐ *Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*

- ☐ Accomplishments for the past month against the project plan,
- ☐ Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,
- ☐ Any updates to the CAPS Project Plans,
- ☐ Progress expected to be made in the upcoming month against the current Project Plan.

#### ***F. Alpha Test Plan and Report***

*The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real-time operational aspects of the on-line computer reservation system. The test performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*

*Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.*

#### ***G. Beta Test Plan and Report***

*The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*

*Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.*

#### ***H. Verification of System/Software***

*Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.*

## ***I. Budget Report***

*The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.*

### ***Summary of Deliverables and Schedule:***

*CAPS Functional Specification 30 days after execution of Cooperative Agreement CAPS*

*Operational Readiness Plan 60 days after execution of Cooperative Agreement CAPS*

*Quality Assurance Plan 60 days after execution of Cooperative Agreement CAPS Project*

*Plan 30 days after execution of Cooperative Agreement*

*CAPS Monthly Project Report 5 days after end of month*

*Alpha Test Plan and Report 30 days prior to test. Report: 10 days after completion of test. Beta*

*Test Plan and Report 30 days prior to test. Report: 10 days after completion of test. Verification of System/Software As requested*

*Budget Report 5 days after end of month*

*\* "Days" as shown are calendar days.*

## ***VI. INTELLECTUAL PROPERTY RIGHTS***

*The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.*

### ***A. Ownership Rights in Developed Technology***

*All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, 'know-how', or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.*

### ***B. U.S. Government Rights in Developed Technology***

*The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non-exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.*

### **C. Marking of Intellectual Property**

*Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.*

### **D. Survival**

*The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.*

### **E. Laws Governing Patents, Copyrights and Other Data Rights**

*All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.*

### **F. Recoupment**

*The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.*

## **VII. DISPUTE RESOLUTION**

*Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.*

## **VIII. TERM AND TERMINATION**

*The performance period of this Agreement is governed by the following stipulations.*

**A. Term**

*This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.*

**B. Termination**

*In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.*

**C. Return of Funds**

*In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.*

**D. Termination Settlement**

*In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.*

**IX. LIABILITY AND INDEMNIFICATION**

*Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.*



*Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.*

## **X. SPECIAL PROVISIONS**

### **A. FAA Agreements Officer**

*The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.*

### **B. Notices**

*Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:*

*If to Lead Carrier If to the FAA: Project  
Manager Agreements Officer  
Lead Carrier, ABC Airlines Federal Aviation Administration  
Carrier Address 800 Independence Avenue, S.W*

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*Washington, D.C. 20591*

*Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.*

### **C. Audit**

*The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.*

*Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.*

*Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.*

#### **D. Warranty**

*The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.*

*These warranty provisions shall survive termination or expiration of this Agreement.*

#### **E. Force Majeure**

*Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.*

#### **F. Security**

*The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.*

*Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.*

#### **G. Changes In Ownership**

*Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.*

#### **H. Lobbying Certification**

*Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating compliance with 31 USC 1352 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier*

*Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.*

### ***I. Severability***

*In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.*

### ***J. Construction of Agreement***

*This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.*

### ***K. Entire Agreement***

*This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.*

### ***L. Amendments***

*This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.*

### ***M. Relationship Of Parties***

*The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.*

### ***N. Limitation of Assignment***

*Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.*

## **0. Contracting By Lead Carrier**

*Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.*

### **P. Third Party Participation**

*Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.*

## **7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements**

### **SECTION 106 COOPERATIVE AGREEMENTS**

#### **1.0 Patents and Inventions**

##### **1.1 Policy**

*a. The disposition of rights to inventions made by small business firms and non- profit organizations, including universities and other institutions of higher education, under FAA-assisted programs is governed by Chapter 18 of Title 35 of the United States Code, commonly called the Bayh-Dole Act, 35 U.S.C. §200, et seq. In accordance with the Presidential Memorandum entitled Government Patent Policy issued on February 18, 1983 and Executive Order 12591, FAA may apply the policies of that Act to all participants in cooperative agreements. The Department of Commerce (DOC) is the lead agency for implementing the Bayh- Dole Act and has published guidance to Federal agencies at Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.*

*b. FAA's standard Patent Rights clause is identical to that prescribed in 37 CFR §401.14(a) except that:*

*1. FAA has tailored the clause to apply to funding agreements (which term includes both grants and cooperative agreements), and to identify FAA as the interested Government agency;*

*2. pursuant to DOC guidance appearing in Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.5(d), FAA has added to paragraph b. of the clause a stipulation that FAA reserves the right to direct a recipient to transfer to a foreign government or research performer such rights to any subject invention as are required to*

*comply with any international treaty or agreement identified when the grant is made as being applicable to the assisted research;*

*3. as permitted by 37 CFR §401.5(f), FAA has added two subparagraphs to the end of paragraph f. 7 of the clause to require recipients, or their representatives to send to FAA confirmations of the Government licenses for and copies of any U.S. patents on subject inventions; and*

*4. the word "recipient" is substituted for "contractor", and "cooperative agreement" is substituted for "contract."*

*c. FAA patent policy with respect to procurement contracts is found in the Acquisition Management System, AMS. For patent policy relating to research grants, see Chapter 8, section 5 (as amended) of FAA Order 9550.7A, Research Grants Program.*

#### *1.1.2 Standard Patent Rights Clause*

*Where appropriate, the Standard Patent Rights Clause found at 37 CFR §401.14, appropriately modified as explained below, should be used in every cooperative agreement awarded by the FAA unless a special patent clause has been negotiated that would better serve the interests of the FAA and the Government as a whole. The concurrence of legal counsel is required for the use of any special patent clauses that deviate from that set out at 37 CFR §401.14.*

*a. In cooperative agreements covered by a treaty or agreement that provide that an international organization or foreign government, research institute or inventor will own or share patent rights, FAA will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.*

*b. If a recipient elects not to retain rights to an invention, FAA will allow the inventor to retain the principal patent rights unless the recipient, or the inventor's employer if other than the recipient, shows that it would be harmed by that action.*

*c. FAA will normally allow any patent rights not wanted by the recipient, or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, FAA may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.*

#### *1.2 Copyright*

##### *1.2.1 Rights to Copyrightable Material*

*The FAA shall apply the following principles governing the treatment of copyrightable material produced under FAA cooperative agreements.*

- a. FAA normally will acquire only such rights to copyrightable material as are needed to achieve its purposes or to comply with the requirements of any applicable government-wide policy or international agreement.*
- b. To preserve incentives for private dissemination and development, FAA normally will not restrict or take any part of income earned from copyrightable material except as necessary to comply with the requirements of any applicable government-wide policy or international agreement.*
- c. In exceptional circumstances, FAA may restrict or eliminate a recipient's control of FAA-supported copyrightable material (including computer software and associated documentation) and of income earned from it, if FAA determines that this would best serve the purposes of a particular program.*

#### *1.2.2 Standard Copyrightable Material Clause*

*The following copyrightable material clause should be used in every cooperative agreement awarded or entered into by FAA that relates to scientific or engineering research unless a special copyrightable material clause has been negotiated. The concurrence of legal counsel is required for the use of any special copyrightable material clauses that deviate from that set out below.*

#### **CLAUSE-COPYRIGHTABLE MATERIAL**

*a. "Subject writing" means any material that:*

- 1. is or may be copyrightable under Title 17 of the United States Code; and*
- 2. is produced by the recipient, or its employees in the performance of work under this grant, cooperative agreement or other transaction.*

*Subject writings include, but are not limited to, such items as reports, books, journal articles, sound recordings, videotapes, video discs, computer software and related documentation.*

*b. Copyright Ownership, Government License. Except as otherwise specified in the grant, cooperative agreement, or other transaction, or by this paragraph, the recipient may own or permit others to own copyright in all subject writings. The recipient agrees that if it or anyone else does own the copyright in a subject writing, the Federal government will have a non-exclusive, nontransferable, irrevocable, paid-up license to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted works to the public.*

*c. Effect of International Agreements. If the cooperative agreement, or other transaction indicates it is subject to an identified international agreement or treaty, FAA can direct the recipient to convey to any foreign participant or otherwise dispose of such rights to subject writings as are required to comply with that agreement or treaty.*

*d. Recipient Action to Protect Government Interests. The recipient agrees to acquire, through written agreement or an employee relationship, the ability to comply with the requirements of the preceding paragraphs and, in particular, to acquire the ability to convey rights in a subject writing to a foreign participant if directed by FAA under the previous paragraph. The recipient further agrees that any transfer of copyright or any other rights to a subject writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this article.*

### **1.3 Special Patent and Copyright Situations**

#### **1.3.1 Special Grant Provisions**

*At the request of the prospective recipient, or on recommendation from FAA staff, the FAA Official authorized to award or administer the cooperative agreement, with the concurrence of the cognizant Program Manager and legal counsel, may negotiate special patent or copyright provisions when that Official determines that exceptional circumstances require restriction or elimination of the right of a prospective recipient to control principal rights to subject inventions or writings in order to better achieve the objectives of the program, the mission of the FAA, or (in the case of inventions) Chapter 18 of Title 35 of the United States Code. Every special copyright or patent provision will allow the recipient, after an invention has been made or copyrightable material created, to request that it be allowed to retain principal rights to that invention or material, unless doing so would be inconsistent with an obligation imposed on FAA by statute, international agreement or pact with other participants in or supporters of the research.*

#### **2.1 Cooperative Agreements Not Primarily for Experimental, Developmental, or Research Work**

*Cooperative agreements not primarily intended to support experimental, developmental, or research work should include appropriate patent or copyrightable material provisions when necessary to protect the interests of the FAA and the Government as a whole.*

## Section Revised:

### 3.10.1 A 12 – Final Indirect Cost Rates

#### Procurement Guidance - (~~1/2017~~ 4/2017)

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#### T3.10.1 Contract Administration Revised 1/2009

##### A Contract Administration

- 1 Contract Management Revised 7/2012
- 2 Basic Responsibility for Contract Administration Revised 7/2012
- 3 Assignment of Contracting Officer's Representative Revised 10/2014
- 4 Communications with Vendors Revised 4/2007
- 5 Use of Government Excess Equipment Revised 4/2007
- 6 Contract Modifications Revised 10/2012
- 7 Suspension and Stop-Work Orders Revised 7/2011
- 8 Novations and Change-of-Name Agreements Revised 10/2014
- 9 Conversion of FAR Contracts to AMS Revised 4/2007
- 10 Contract Files Revised 7/2011
- 11 Contract Closeout Revised 7/2016
- 12 Final Indirect Cost Rates Revised ~~7/2012~~ 4/2017
- 13 Contract Audit Revised 7/2012
- 14 Bankruptcy Revised 7/2012
- 15 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 10/2012
- 16 Contractor Performance Documentation and Maintenance Added 4/2013

##### B Clauses

##### C Forms

##### D Appendices

- 1 Appendix – Reserved Revised 7/2014
  - 2 Appendix - Reserved Revised 7/2014
  - 3 Appendix - When Should a COR be Appointed Revised 4/2012
  - 4 Appendix - Stop-Work Order Revised 4/2011
  - 5 Appendix - Novation Agreement Revised 4/2011
  - 6 Appendix - Change of Name Agreement Revised 4/2011
  - 7 Appendix - Guide for Creating and Maintaining Contract Administration Files Revised 7/2012
  - 8 Appendix - Contract File Completion Statement Revised 4/2011
  - 9 Appendix – Reserved Revised 7/2014
  - 10 Appendix - Common Authorities for Modifications Revised 7/2016
  - 11 FAA CPARS Guide Revised 10/2014
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### **T3.10.1 Contract Administration Revised 1/2009**

#### **A Contract Administration**

##### **1 Contract Management Revised 7/2012**

a. Contracts are managed to ensure that FAA receives a specific product or service in a timely manner. In certain circumstances, a modification to contractual requirements, with or without consideration from the contractor, may be in the FAA's best interest. If such a situation arises, the Contracting Officer (CO) documents the circumstances. When the CO intends to substantially alter the obligations of the parties without consideration, the CO first obtains concurrence of legal counsel and the Chief of the Contracting Office (COCO) before execution, and must document the rationale.

b. The Appendices to this guidance includes memoranda, letters, and agreements used for contract administration actions described in this section. The CO may adapt the COR-related memoranda to fit the specific situation. The stop work order, novation, and change of name agreement in the Appendices may be modified by the CO, subject to legal counsel's concurrence.

c. Use of AMS contract file content checklists is mandatory; these checklists are in FAST under Procurement Form Templates.

##### **2 Basic Responsibility for Contract Administration Revised 7/2012**

COs are responsible for administering contracts covered by AMS. This is accomplished through a team effort with the program office, and working through the Contracting Officer's Representative (COR) and other functional specialists supporting a program.

##### **3 Assignment of Contracting Officer's Representative Revised 10/2014**

a. Designating a Contracting Officer's Representative (COR). The CO may designate an individual to act as his/her representative to facilitate contract administration. A COR resolves technical issues, gives technical direction to the contractor, and interprets technical processes and procedures for the CO. Other functions include interpreting technical requirements; assisting with the acquisition strategy; assisting with or developing the statement of work; preparing Government cost estimates; assisting in negotiation of costs or price of technical requirements; monitoring and evaluating contractor performance; reviewing and accepting services, supplies, and equipment; reconciling invoices and recommending payments. Requiring organizations should ensure that the person recommended as COR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. The CO appoints a representative by written memorandum describing specific delegated authority and responsibilities. The memorandum is provided by the CO to the COR at the time the assignment is made or changed in any way. See the Appendix to this Guidance for a sample delegation memorandum. Also see AMS COR Handbook for additional information about COR duties.

b. Basic Training and Biennial Refresher Training Requirements. See AMS Policy Section 5, Acquisition Career Program, for complete training requirements.

(1) The designated COR must meet the initial training requirement for certification by completing the designated hours of COR training. The required training is established as a three level certification program. Training and certification for Levels I and II will be completed prior to appointment. Level III certification must be completed no later than six months after appointment. Training may be completed online or in a classroom. Information regarding online and classroom training providers can be obtained from the Acquisition Career Management Office (AAP-300).

(2) The COR must provide documentation showing certification or a waiver to the CO.

c. Authority of the Contracting Officer's Representative. A duly-assigned COR is authorized to perform the actions delegated by the CO in a memorandum of delegation. When determining the support needed from a representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the representative in a written memorandum of delegation. One memorandum of delegation for all situations may not be appropriate because contractual situations are distinct and have varying needs. The sample delegation memorandum in the Appendix to this Guidance may be modified to reflect the specific needs of the contract and CO. Depending on the scope, duration, complexity and aggregate total of the contract, a COR may not be required.

d. Changing the Contracting Officer's Representative. To change the representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. Both of these memoranda are in writing and issued concurrently. The CO must forward copies of COR changes to the Acquisition Career Management Team (AAP-300), as they occur.

e. Notifying the Contractor. The CO furnishes copies of all delegation and revocation memoranda to the contractor so that they are aware of the representative and his or her authority and responsibilities.

#### **4 Communications with Vendors Revised 4/2007**

Teamwork is an important element for successful contract performance. COs should establish good working relationships with vendors, and regular communication helps build this relationship. Post award conferences, either in person or by telephone, are one means to establish communication and lay the foundation for teamwork at the start of contract performance. After performance has begun, recurring communication ensures everyone working under the contract understands the objectives and is focused on a common goal, and that any potential problems or schedule difficulties are identified and addressed before adversely impacting FAA or the contractor. Communication is especially critical: at the beginning of contract performance; whenever either party detects a problem; and before and after significant milestones. Communication should occur routinely even when no problems may be encountered.

## **5 Use of Government Excess Equipment Revised 4/2007**

The CO may authorize a cost reimbursement contractor to use excess FAA or DOT equipment, if a good business decision. The FAA Property Management organization makes arrangements for excess property upon written request by the contractor and approval by the CO. When FAA provides excess property to contractors, appropriate AMS property clauses must be part of the contract.

## **6 Contract Modifications Revised 10/2012**

a. *Authority.* Only a CO or person delegated specific authority to execute contract modifications, may execute contract modifications.

b. *Ceiling-Priced Modifications.*

(1) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

(a) All requirements for performance or delivery;

(b) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and

(c) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling- priced modification or before completion of 40% of the work to be performed, whichever occurs first.

(2) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

c. *Types of Contract Modifications.* Contract modifications fall into the following categories (see the Appendix to this guidance section for a detailed description of the types of modifications and associated authorities for modifying contracts):

(1) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement in the

form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

- (a) Make equitable adjustments when necessary;
- (b) Definitize quick-response contracts;
- (c) Reflect other agreements of the parties which modify the terms of contracts; or
- (d) Make changes requested by the contractor.

(2) *Unilateral*. A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:

- (a) Make administrative changes;
- (b) Issue changes under the Changes clause; or
- (c) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.).

d. *Extension of Contracts*.

(1) *Before Expiration*. The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(2) *After Expiration*. The CO must **not** extend a contract after it has expired.

## 7 Suspension and Stop-Work Orders **Revised 7/2011**

a. *General*.

(1) Suspensions of work or stop-work orders are tools available to the Government to interrupt the contractor's work in appropriate situations. (See "Stop Work Order" example in the Appendix to this Guidance). The CO should assure that the appropriate clauses governing stop work and suspensions of work are in all contracts.

(2) The CO's suspension or stop-work order should be in writing and include information required by the clauses, such as:

- (a) A description of the work to be suspended/stopped;
- (b) Instructions concerning the contractor's issuance of further orders for materials or services;
- (c) Guidance to the contractor on action to be taken on any affected subcontracts; and
- (d) Other suggestions for minimizing the contractor's costs.

(3) If either the suspension or stop-work is used, the interruption of work should not be for an unreasonable length of time. Also, the CO should work with the program official, legal counsel, and others supporting the program, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the suspension or stop-work order, or continue the suspension or stop-work order while the issues are being resolved.

b. *Suspensions.*

(1) Suspensions may be used in fixed-price construction or architect-engineer contracts in situations such as:

- (a) Delays caused by waiting for a decision from FAA;
- (b) Weather-related reasons;
- (c) Technological advancement;
- (d) Production or engineering breakthroughs;
- (e) Realignment of FAA programs or objectives;
- (f) Public safety concerns;
- (g) Emergency situations or other urgent conditions;
- (h) Differing site conditions; or
- (i) Violation of substantive contract terms, including FAA's smoking, harassment-free workplace, or other policies.

(2) Generally, the decision to suspend work should be made jointly by the CO and program official. However, in cases of public safety concerns, emergency situations, or other urgent conditions, the CO may:

- (a) Suspend work pending discussion with the program official;

(b) Notify the contractor orally and follow-up immediately with a written notice.

c. *Stop-work Orders.* Stop-work orders may be considered in supply, service or research and development contracts when the work must be interrupted pending a decision by the Government.

## **8 Novations and Change-of-Name Agreements Revised 10/2014**

### **a. *Novation.***

(1) Novation is a legal instrument executed by the contractor (transferor), the successor in interest (transferee) and the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Novations typically occur when the assets of the transferor are purchased by another company but may also be considered when a contractor is unable to perform and another viable contractor is willing to assume the original contractor's rights and duties under the contract.

(2) When in its best interest, the FAA may recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of:

(a) All of the contractor's assets; or

(b) The entire portion of the assets involved in performing the contract. Examples of such transactions include, but are not limited to

(i) Sale of the contractor's assets with a provision for assuming liabilities;

(ii) Transfer of the contractor's assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(3) A novation agreement may not be necessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government.

(4) *Contractor (Transferor) Responsibilities.* Contractors requesting a novation of a contract to recognize a successor in interest must provide the information the CO needs to evaluate and process the novation request. This includes information that validates that novation of the contract is in the best interest of the FAA and should include:

(a) Three copies of the proposed novation agreement (see "Paragraph (7) Content of Novation Agreement") signed by the original contractor and the successor in interest;

(b) One copy each, as applicable, of the following:

(i) The document describing the proposed transaction, purchase/sale agreement or memorandum of understanding;

(ii) A list of all affected contracts between the transferor and the FAA, as of the date of sale or transfer of assets, showing for each, as of that date, the

(A) Contract number and type;

(B) Name and address of the contracting office;

(C) Total dollar value, as amended; and

(D) Approximate remaining unpaid balance;

(iii) Evidence of the transferee's capability to perform;

(c) Any other relevant information requested by the CO;

(d) One copy of each of the following documents, as applicable, as the documents become available except as provided in (5) below:

(i) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(ii) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(iii) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(iv) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts;

(v) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

(vi) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;

(vii) Evidence that any security clearance requirements have been met;

(viii) The consent of sureties on all contracts listed under (4)(b)(ii) of this section if bonds are required, or a statement from the transferor that none are required.

(5) The CO may modify this list of documents, provided that the CO receives information sufficient to protect the Government's interest.

(6) *CO Responsibilities.* The CO has the primary responsibility to process the novation and determine, in consultation with legal counsel, if it is in the best interest of the FAA.

(a) *Novations Involving More Than One Contract.* When multiple contracts are involved, the CO administering the contract with the largest unpaid dollar balance should coordinate the novation agreement for all FAA contracts.

(b) *Coordination with Other Executive Agencies.* The FAA may elect to have its contracts included in the novation agreement (the "global agreement") being processed by the responsible contracting officer for all of the other executive agencies. If this election is made, the FAA CO should negotiate a separate advance agreement with the contractor that addresses any issues unique to the FAA, if appropriate. This agreement should be attached to and incorporated in the global novation agreement.

(c) *Evaluating the Novation Request.* The CO should consider all the information collected as a result of the proposed novation request with emphasis on the successor's ability to perform including:

(i) Contractor submissions under (5) above;

(ii) Information provided by other contracting offices;

(iii) Information indicative of the successor's responsibility such as debarment and suspension information;

(iv) National Institute of Health's Past Performance Database;

(v) Organizational conflict of interest;

(vi) Any other information that reflects the successor's ability to perform the contract.

(d) *Conflict of Interest (COI).* If the CO determines that a COI exists and cannot be resolved, but the novation is in the best interest of the FAA, the CO may initiate action to waive or mitigate the COI in accordance with AMS Procurement Guidance T.3.1.7.



(e) Coordinate the action with legal counsel to assure legal sufficiency.

(f) *CO's Decision.*

(i) *Rejecting the Novation Request.* If the CO determines that it is not in the best interest of the FAA to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(ii) *Executing the Novation.* If the CO approves the novation, he/she should

(A) Prepare and sign a written contract modification for each affected contract;

(B) Incorporate a copy of the agreement into the contract modification;

(C) Place the original contract modification in the official contract file;

(D) Distribute the modification to the transferor; the transferee, affected FAA contracting offices, the paying office and any other distribution that is required for contract modifications.

(7) *Content of the Novation Agreement.* Appendix 5 to this guidance is a novation agreement that provides a guide to preparing novation agreements. This may be adapted, subject to legal counsel's review, to fit specific cases but should include the following provisions:

(a) Successor contractor/transferee Responsibilities;

(b) The transferee assumes all the transferor's obligations under the contract;

(c) The transferor waives all rights under the contract against the Government;

(d) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(e) A statement that nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(8) Any separate agreement between the transferor and the transferee regarding assumption of liabilities (e.g., an Advance Agreement covering the treatment of long-term incentive compensation plans, cost accounting standards noncompliance issues, environmental cleanup costs, final overhead costs) and any other issues should be incorporated in the novation agreement.

b. *Change of Name Agreements.*

A change of name agreement is appropriate when only the contractor's name changes and the rights and obligations of the parties are not affected.

(1) *Contractor's Responsibilities.* The contractor should submit the following to the CO:

- (a) A written request to the CO to change the name;
- (b) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;
- (c) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;
- (d) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The CO may request the total dollar value as amended and the remaining unpaid balance for each contract.

(2) *CO's Responsibilities.* The CO will then prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the vendor's request. The modification should state something similar to: "This modification changes the name of the Contractor from [enter contractor's previous name] to that shown above. This change is made at the request of the Contractor received on [insert date]."

(3) A format for a Change of Name agreement is in Appendix 6.

## **9 Conversion of FAR Contracts to AMS Revised 4/2007**

a. Contracts awarded under the Federal Acquisition Regulations (FAR) system are not automatically converted to AMS contracts. The CO, jointly with the program official and legal counsel, should consider the merits of converting existing FAR contracts to AMS. Circumstances where conversion may benefit both FAA and contractors include contracts with:

- (1) A potential for litigation (to include clause 3.9.1-1 Contract Disputes);
- (2) A significant term or delivery schedule remaining;
- (3) Potential of new work being added to the existing contract; or
- (4) One or more options.

b. The above list is not all-inclusive. COs may consider other situations if they believe the conversion would be advantageous. Contracts near completion, relatively inactive, or the result of extensive negotiation of clauses may not need to be converted. In all cases, converting a contract from FAR to AMS, whether in whole or in part, requires legal counsel's review before bilateral signature of the parties.

## **10 Contract Files Revised 7/2011**

a. The files containing records of all contractual actions should be maintained by the organization or person administering the contract. Documentation in the files should be a sufficiently complete history of the transaction and:

- (1) Provide a complete background as a basis for informed decisions at each stage in the acquisition process;
- (2) Support actions taken;
- (3) Provide information for reviews and investigations; and
- (4) Furnish essential facts in the event of litigation or Congressional inquiries.

b. A contract file should consist of the following:

- (1) Contracting office documentation of the acquisition, basis for award, assignment of contract administration if applicable (including payment responsibilities), and any subsequent actions taken by the contracting office;
- (2) Contract administration files that document actions reflecting the basis for and the performance of contract administration responsibilities;
- (3) Government-furnished/contractor-acquired property file; and
- (4) Paying office contract file, which documents actions prerequisite to, substantiating, and reflecting contract payments.

c. The contract files that contain proprietary or source selection information should be identified as such and protected from disclosure to unauthorized persons.

d. A guide describing creation and maintenance of contract administration files is in Appendix 7 to this Guidance.

e. File content checklists for contracts, purchase orders/FSS orders, blanket purchase agreements, and agreements are in the Procurement Form Templates area of FAST. These checklists will assist in

organizing the file and ensuring that required clearances and documents are properly filed. The CO must use and incorporate the following checklists in applicable files:

- (1) Contract Organization and File Content List
- (2) Contract Organization and File Content List--Modification
- (3) Purchase Order/GSA/FSS Order File Checklist\*
- (4) Blanket Purchase Agreement (BPA) File Checklist
- (5) Interagency Agreement File Checklist

\* Note: Checklist not required for orders with a total value of less than \$10,000.

## **11 Contract Closeout Revised 7/2016**

a. *Background.* Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract. Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs associated with administration and closeout processes. Timely closeout deobligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion. AMS Guidance regarding both Records Retention and Electronic Contract Files also applies.

b. *Definitions.*

- (1) A contract is considered to be physically complete when:
  - (a) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
  - (b) The contractor has performed all services and the Government has accepted the services;
  - (c) All option provisions, if any, have expired; and
  - (d) The Government has given the contractor a notice of complete contract termination.
- (2) A purchase order, or delivery order against a Federal Supply Schedule contract, is considered to be physically complete when:
  - (a) Property or services have been received within the terms of the contract;

(b) Final payment has been made to the contractor; and

(c) The recipient acknowledges the acceptance of the goods/services in PRISM (applicable only when 3-way matching is used per AMS Invoice Guidance).

c. *Time Frames.* Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist" or the closeout section of the "Purchase Order/GSA/FSS Order File Checklist" (See Procurement Forms in FAST). Closeout in PRISM is required for all contracts, purchase orders, and delivery/task orders.

(1) Files for contracts using commercial and simplified purchase procedures must be closed out upon final payment.

(2) Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, must be closed out within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).

(3) Contract files for contracts requiring settlement of indirect cost rates must be closed out within 36 months of the month in which the CO receives evidence of physical completion.

(4) Contract files for all other contracts must be closed out within 20 months of the month in which the CO receives evidence of physical completion.

(5) All delivery/task orders must be individually closed out within the time frame established for the basic contract as specified in subsections (2), (3), or (4) above. The time frame for the delivery/task order begins when the CO receives evidence of physical completion of the delivery/task order.

d. *Preparation for Closeout.* To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them in a timely manner and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist." Following are examples of actions the CO may be able to take before the contract is physically complete:

(1) Ensure that the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the FAA Servicing Security Element's list.

(2) Ensure that all information in PRISM is current and correct.

(3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).

(4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.

(5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. *Closeout Procedures.* When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify that the documents and activities included in the "Contract Closeout Checklist" have been received or are complete. After completion of the "Contract Closeout Checklist" and notification of final payment from Accounts Payable, the CO must complete and sign a "Contract File Completion Statement" (Appendix 11). For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the "Contract Closeout Checklist" and "Contract File Completion Statement." To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

(1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.

(2) Send a memorandum to the program official to confirm contract completion.

(3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems (See Appendix 12 for memorandum). The COR should return the signed memo to the CO within 30 days. For contractor employees transferring to a follow-on contract for the same services, the CO must notify the Servicing Security Element (SSE) of all employee transfers in order to retain such contractor accounts.

(4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.

(5) Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).

(6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:

(a) Final voucher.

(b) Confirmation of settlement of subcontracts.

(c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.

(d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).

(e) Patent and royalty reports.

(f) Contractor's release.

(g) Contractor's assignment of refunds, rebates, credits, and other amounts.

(h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to the FAA Servicing Security Element.

(7) Review and approval of the final voucher should include:

(a) Verification that all contractual requirements have been satisfied.

(b) Completion of any fee adjustments.

(c) Verification that contractual funding limitations have not been exceeded.

(d) Identification of any offsets applied.

(e) Verification of accuracy of Contractor Release and Assignment.

(f) Verification that all previous Contractor vouchers have been paid.

(g) Approval for payment with signature and date.

(h) Deobligation modification processed and distributed for any funds determined to be in excess.

(8) Completion and submittal of the Contractor Performance Assessment Reporting System (CPARS) evaluation for the contract.

(9) Closeout in PRISM.

f. *Quick-closeout Procedures.* In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used

in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

(a) The contract is physically complete;

(b) The amount of unsettled indirect costs is not more than \$5,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and

(c) Agreement can be reached on a reasonable estimate of allocable dollars.

(2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

(a) Ensure adequate rationale for the decision is included in the file;

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information;

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;

(e) Establish final indirect cost rates using one of the following rates:

(i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;

(ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;



(iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) The previous year's final rates;

(vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

*g. Deobligation of Funds Prior to Closeout.*

(1) *Actions Before Deobligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may deobligate unused funding prior to the finalization of the contractor's final cost rates. Prior to deobligating unused funding, the CO must:

(a) Confirm that contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) Receive written authorization from the funding program office that the funds may be deobligated (a purchase request requesting the deobligation of funds satisfies this requirement).

(2) *Reconciliation.* After establishment of the contractor's final cost rates, FAA will reconcile the final funding requirement.

(a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

(b) If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay to the FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

h. *Contract File Documentation.* Official closeout documentation for contracts and interagency agreements, the signed "Contract File Completion Statement," and the completed "Contract Closeout Checklist" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

## **12 Final Indirect Cost Rates Revised 7/2012 4/2017**

a. *Cognizant Federal Agency.* A contractor (or its operating divisions) may do business with more than one Federal agency. To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

b. *Billing Rates.*

(1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.

(2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.

(3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.

(5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. *Reimbursing Indirect Costs.* Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. *Final Indirect Cost Rates.*

(1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. The establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.

(2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

(3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.

(5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:

(a) Pending closeout of subcontracts awaiting Government audit.

(b) Pending contractor, subcontractor, or Government claims.

(c) Delays in the disposition of Government property.

(d) Delays in contract reconciliation.

(e) Any other pertinent factors.

(6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.

(7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

*e. CO Determination Procedure.*

(1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:

(a) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) Educational institutions

(d) State and local governments

(e) Nonprofit organizations other than educational and state and local governments

(2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense

Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant CO must:

(a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and

(b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

(a) Conducts negotiations;

(b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and

(c) Prepares, signs, and places in the contractor general file:

(i) The disposition of significant matters in the advisory audit report;

(ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1.

(vi) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

*f. Auditor Determination Procedure.*

(1) The cognizant Government auditor establishes final indirect cost rates for:

(a) Business units of a multidivisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.

(d) Educational institutions.

(e) State and local governments.

(f) Nonprofit organizations other than educational and state and local governments

(2) The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(b) The administrative cost of CO determination would exceed the expected benefits.

(c) The business unit does not have a history of disputes and there are few cost problems.

(d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(3) Procedures.

(a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.

(b) Upon receipt of a proposal, the auditor:

(i) Audits the proposal and seeks agreement on indirect costs with the contractor;

(ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and

(iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

*g. Certification.*

(1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.

(a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:

(1) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization; and

(2) A state or local government ~~subject to OMB Circular A-87;~~

~~(3) An~~ educational institution ~~subject to OMB Circular A-21; and~~

~~(4) A, or~~ nonprofit organization subject to OMB ~~Circular A-122.~~ Guidance “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (“OMB Uniform Guidance”).

(b) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

(d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

### 13 Contract Audit Revised 7/2012

*a. Contract Audit - Post Award.*

(1) The auditor is responsible for:

(a) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs.

(b) Reviewing the financial and accounting aspects of the contractor's cost control system.

(c) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(2) *Audit Cognizance.* Normally, DCAA is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies should agree on the most efficient and economical approach to meet contract audit requirements.

(3) *Assigning Audit Services.* COs should coordinate with Headquarters Cost/Price Services (AAP-500) when requesting audit services directly from the responsible audit agency. DCAA's audit office locator is online at <http://www.dcaa.mil>. The audit request should include a



suspense date and should identify any information needed by the CO. The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations must be in writing.

#### **14 Bankruptcy Revised 7/2012**

a. *General.* The CO must proactively monitor contracts to the extent practicable for indications of contractor financial difficulty, and respond appropriately to a written notification of bankruptcy. If the contractor provides the CO with a written notification of bankruptcy, the CO must protect FAA's rights and interests under contracts with the contractor.

b. *Contractor Financial Difficulties.* When the CO becomes aware of contractor financial difficulties, he or she must verify accuracy of the information, and follow the steps described below. Information relating to contractor financial difficulties should come from sources such as, but not limited to, the COR, QRO, Finance Office, Office of Inspector General, a financial institution, Dun and Bradstreet, or a newspaper article.

- (1) Determine whether the contractor is performing in a timely manner and making satisfactory progress.
- (2) Consider terminating the contractor for default if performance is untimely or otherwise unsatisfactory and the reason is within the contractor's control.
- (3) Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.
- (4) Notify the cognizant small and disadvantaged business utilization specialist if a small business contractor is involved.
- (5) Notify the bonding company, if appropriate.

c. *Notification of Bankruptcy.* Upon receipt of a contractor notification of bankruptcy, as required by AMS clause 3.10.1-7, "Bankruptcy," the CO must:

- (1) Furnish the notification of bankruptcy to Headquarters Assistant Chief Counsel for Procurement Law and other appropriate offices, such as finance, property, and other FAA contracting offices.
- (2) Determine the amount of FAA's potential claim against the contractor. In assessing this impact, identify and review any contracts that have not been closed out, including those that are physically completed or terminated.
- (3) Take actions necessary to protect FAA's rights and interests, including Government property.

(4) Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

## **15 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 10/2012**

a. *Scope.* The Federal Funding Accountability and Transparency Act, as amended, requires contractors to report subcontracted award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor(s).

b. *Applicability.* This reporting requirement applies to all contracts with a value of \$25,000 or more. Reporting subcontract information is limited to the first-tier subcontractor(s). As described in AMS clause 3.13-14, there is an additional subcontract reporting exemption for contractors and subcontractors who had gross income in the previous tax year under \$300,000. Specific reporting requirements for executive compensation are also outlined in AMS clause 3.13-14.

c. *Review.* The CO will ensure contractors comply with the reporting requirements of AMS clause 3.13-14. Contractor reports will be reviewed as necessary to ensure the information is consistent with contract information. In such reviews, the CO is not required to address data for which FAA would not normally have supporting information, such as compensation information required of contractors and first-tier subcontractors. However, the CO will inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation why it believes the information to be correct. The reports may be reviewed at <http://www.fsrs.gov>.

d. *Failure to Comply.* If the contractor fails to comply with the reporting requirements, the CO will immediately bring this to the contractor's attention. If the contractor still does not comply, appropriate contractual remedies should be taken. In addition, the CO should make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance evaluation.

e. When COs report contracting data to the Federal Procurement Data System (FPDS), certain data will then pre-populate from FPDS to assist the contractor complete and submit the reports.

## **16 Contractor Performance Documentation and Maintenance Added 4/2013**

a. This section provides policies and establishes responsibilities for recording and maintaining contractor performance information in the Contractor Performance Assessment Reporting System (CPARS). This section does not apply to determinations of fees under award or incentive fee contracts.

b. Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable

and cooperative behavior and commitment to customer satisfaction; the contractor's record of meeting small business subcontracting objectives; the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.

c. Past performance evaluations must be prepared as specified in the FAA CPARS Guide, Appendix 11. Generally reporting is done on an annual basis and should be completed no later than sixty (60) days after the end of the applicable reporting period. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

d.

(1) Except as provided in this paragraph (d), FAA must prepare an evaluation of contractor performance for each contract or order that exceeds the following thresholds.

- (i) Services exceeding \$5,000,000
- (ii) Supply contracts exceeding \$10,000,000
- (iii) Construction contracts exceeding \$10,000,000
- (iv) Research & Development contracts exceeding \$5,000,000

(2) An evaluation of contractor performance is required for each order that exceeds the above specified thresholds placed against a Federal Supply Schedule contract, a task order contract or a delivery order contract, or any other ordering Agreement. Evaluations of multiple orders under an ordering contract or agreement may be combined in accordance with the guidance provided in the FAA CPARS Guide.

(3) Contracts or orders made pursuant to the Javits-Wagner-O'Day (JWOD) Act with firms under the AbilityOne program or with Federal Prison Industries, Inc. (FPI) do not require evaluations.

(4) An evaluation may be performed for any contract or order that does not meet the above thresholds.

e. Roles and Responsibilities. Responsibility for completing CPARS evaluations rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order requirements and execution. The AO may be supported in this process by the Assessing Official Representative (AOR). The AOR may be the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Task Monitor for tasks under IDIQ contracts, or any other individual familiar with the contractor's performance. The AO and AOR are responsible for entering the ratings and narratives for each evaluation performed.

f. Non-Disclosure. The completed CPARS evaluation must not be made available to anyone other than Government personnel and the contractor whose performance is being evaluated.

Agency support contractors must not have access to CPARS evaluations of other contractors.

## **B Clauses**

[view contract clauses](#)

## **C Forms**

[view procurement forms](#)

## **D Appendices**

**1 Appendix – Reserved Revised 7/2014**

**2 Appendix – Reserved Revised 7/2014**

**3 Appendix - When Should a COR be Appointed Revised 4/2012**

### **When Should a COR be Appointed?**

#### **Usually Necessary:**

- ☐ Contracts for items, services or construction with technical complexity, such as:
  - o Major systems
  - o Highly technical services such as engineering, programming, architecture and engineering (A&E) etc.
  - o Evolving technologies (e.g. NEXTGEN)
  - o Large scale construction (e.g. ATCT, ARTCC)
- ☐ Contracts with a long performance time, such as:
  - o Janitorial
- ☐ Items, services or construction requiring extensive oversight and inspection, such as:
  - o Guard services
- ☐ Contracts with a contract type other than firm-fixed-price (e.g. cost-type, T&M/LH)
- ☐ Service or construction contracts with numerous task orders (e.g. TSSC, NISC, eFAST)
- ☐ High-visibility contracts
- ☐ Contracts with numerous contractor personnel, especially when performing at an FAA site
- ☐ Contracts requiring delivery/monitoring of extensive Government furnished property

#### **Usually Not Necessary:**

- ☐ Contracts delivering commercial fixed-price items or services, such as:

- o Spare parts
- o Office equipment and maintenance
- o Tree trimming/small landscaping projects
- o Other items of a low complexity
- ☐ Commercial services with a short performance time, such as:
  - o Copier repair
  - o Elevator repair
  - o Small scale moving services
- ☐ Purchase orders with simple terms and conditions that require minimal oversight and inspection
- ☐ Short-term contracts to address requirements for a bona-fide emergency

#### **4 Appendix - Stop-Work Order Revised 4/2011**

##### **STOP-WORK ORDER**

Pending a decision from the FAA, you are hereby instructed to stop all work immediately and to make no further commitments under contract [*insert number*] pursuant to clause 3.10.1-9 titled "Stop-Work Order." Under the requirements of this clause, please take steps necessary to minimize the incurrence of costs allocable to the period of work stoppage and advise all subcontractors and vendors to do the same. This stop-work order is in effect for 90\* days from the date you receive this letter.

*\*A longer period may be indicated based upon mutual agreement of the parties.*

#### **5 Appendix - Novation Agreement Revised 4/2011**

##### **NOVATION AGREEMENT**

The [*insert name of transferor*] (Transferor), a corporation duly organized and existing under the laws of [*insert state*] with its principal office in [*insert city here*]; the [*insert name of transferee*] (Transferee), [*if appropriate add "formerly known as the [insert former name]"*] a corporation duly organized and existing under the laws of [*insert state*] with its principal office in [*insert city here*]; and the United States of America (Government) enter into this Agreement as of [*insert the date transfer of assets became effective*] under applicable State law.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the [*insert name(s) of agency(ies)*] [*insert name(s) of agency(ies)*], has entered into certain contracts with the Transferor, namely: [*insert contract or purchase order identifications or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."*] The term "the contracts," as used in this Agreement, means the above contracts and

purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not

performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of [*insert date*], the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a [*insert term descriptive of the legal transaction involved between the Transferor and the Transferee.*]

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Government.

(When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below.)

(8) A certificate dated [*insert date*], signed by the Secretary of State of [*insert name of State*], to the effect that the corporate name of EFG Corporation [*insert name of transferor*] was changed to XYZ Corporation [*insert name of transferee*] on [*insert date*], has been filed with the Government.

(b) In Consideration of these facts, the Parties agree that by this agreement

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts.

Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee--

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA ,

By \_\_\_\_\_

Title \_\_\_\_\_

[insert name of company],

By \_\_\_\_\_

Title \_\_\_\_\_

(CORPORATE SEAL)

[insert name of company],

By \_\_\_\_\_

Title \_\_\_\_\_

#### CORPORATE SEAL CERTIFICATE

I, [*insert name of secretary*], certify that I am the Secretary of ABC Corporation, that [*insert name*], who signed this Agreement for this corporation, was then [*insert information*] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this day of \_\_\_\_\_ 19 \_\_\_\_\_. By

\_\_\_\_\_

(CORPORATE SEAL)

#### CERTIFICATE

I, [*insert name*], certify that I am the Secretary of [*insert name of company*], that [*insert name*], who signed this Agreement for this corporation, was then [*insert information*] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of \_\_\_\_\_ 19\_\_\_\_.

By \_\_\_\_\_

CORPORATE SEAL

### 6 Appendix - Change of Name Agreement Revised 4/2011

#### CHANGE OF NAME AGREEMENT

The [*insert new name of company*] (Contractor), a corporation duly organized and existing under the laws of [*insert State*], and the United States of America (Government), enter into this Agreement as of [*insert date*] when the change of name became effective under applicable State law.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the [*insert name(s) of agency(ies)*], has entered into certain contracts and purchase orders with [*insert original name of*



company], namely [insert contract or purchase order identifications; or delete "namely" and insert "as shown in the attached list marked "Exhibit A"] and incorporated in this Agreement by reference." The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) [Insert former name of company], by an amendment to its certificate of incorporation, dated [insert date], has changed its corporate name to [insert new name of company].

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) In consideration of these facts, the parties agree that--

(1) The contracts covered by this Agreement are amended by substituting the name [insert new name of company] for the name [insert original name of company] wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

United States of America ,

By \_\_\_\_\_

Title \_\_\_\_\_

[Insert new name of company]

By \_\_\_\_\_

Title \_\_\_\_\_

Corporate Seal

Certificate

I, [insert name] , certify that I am the Secretary of [insert new name of company]; that [insert name], who signed this Agreement for this corporation, was then [insert information] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing

body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this [*insert number*] day of [*insert month*] 19[*insert year*].

By \_\_\_\_\_

Corporate Seal

## **7 Appendix - Guide for Creating and Maintaining Contract Administration Files**

**Revised 7/2012**

The following guidance is intended to assist contracting personnel maintain contract files and perform contract administration. When contracting personnel invest time at contract award to create files and tracking tools, and maintain those files as changes occur, it ultimately helps reduce time required for contract administration and closeout. Organized and maintained files allow contracting personnel to quickly and easily locate documents and information when needed, making contract administration more efficient and less burdensome. The procedures outlined below provide enough detail for effective administration of large contracts. For administration of smaller contracts, contracting personnel can choose those sections that apply.

### **1. Establishing Contract Administration Files (or Basic Contract Files).**

Contract File folders should be used for all files related to the contract. Labels on folders should be typed so they can be easily read and should include the contract number and title of contents (e.g., Basic Contract Folder, Modification Folder, Voucher/Invoice Folder). The Basic Contract File should include the documents listed in the subparagraphs below. Documents should be placed in the folder(s) in the order listed in the "Contract Organization and File Content List" (see Procurement Forms in FAST) and separated by marked tabs or in separate folders. The "Contract Organization and File Content List" should be annotated with the contractor's mailing address and fax number, contractor's point of contact and telephone numbers, Contracting Officer's Representative (COR) name and telephone number, and Quality Reliability Officer (QRO) name and telephone number.

a. *Basic Contract Documents.* A copy of the table of contents should be included in each folder of the Basic Contract File. (Some contracts are large enough to require more than one folder.)

1. Original Signed Contract - Sections A thru J.
2. Distribution Sheet (the Distribution Sheet should be annotated with the date each copy of the contract was distributed.
3. Requisition or procurement request (PR) and appropriate automated procurement system award form.
4. Copies of COR, QRO, Property Administrator, and Contract Administrator Designation memoranda.
5. Any other applicable documents listed in the Contract Organization and File Content

List.

b. Contract Data Requirements List (CDRL) Folder. Copies of documents delivered under CDRLs should be filed in the order received, with each version separated by tabs.

c. Voucher/Invoice Folder. Each voucher/invoice should be filed with its signed voucher/invoice approval certification and record of payment. Vouchers/invoices should be filed chronologically. A financial spreadsheet should be filed on the left side of each Voucher/Invoice Folder. Guidance on creating financial spreadsheets can be found in paragraph (2)(a), below.

d. Working Copy of the Contract. A working copy of the contract should be maintained electronically and in hard copy in a binder. Both copies should be updated to reflect the most current version of the contract each time a modification is issued. To facilitate this process, all modifications should be issued with contract change pages. Changes in the contract change pages should be highlighted (e.g., bold, shaded, or italicized font).

e. Other Contract Folders. Folders should be created for the following contract documentation, as applicable:

1. Incoming Correspondence;
2. Outgoing Correspondence;
3. Subcontracts;
4. Government Furnished Property/Information;
5. Memoranda to the File;
6. Program Management Reviews/Progress /Status Reports;
7. Quality Reliability Officer (QRO) Reports;
8. Contractor and Industrial Security; and
9. Modifications.

## **2. Processing Vouchers/Invoices.**

a. Financial Spreadsheet. A financial spreadsheet should be developed to track total contract obligations and invoice payments. This provides the current balance of contract funds. For contracts containing many Contract Line Item Numbers (CLINs), it may be helpful to develop a spreadsheet for each CLIN. For contracts containing task orders, it may be helpful to develop a spreadsheet for each task order. If spreadsheets are created for each CLIN or task order, a summary financial spreadsheet should be created to provide the current balance of funds for the entire contract.

b. Processing Vouchers/Invoices.

1. Review each voucher/invoice for errors;
2. Record costs and fees separately in spreadsheets;
3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in PRISM, noting date sent to COR/designee;

4. Set up a "Voucher Suspense Desk File" with a copy of the approval certification; note date due to Accounts Payable. Set a suspense date a few days earlier to trigger COR/designee acceptance and release;
5. Upon confirmation of acceptance in PRISM by COR/designee, authorize payment of invoice;
6. Make a copy of approval certification and invoice;
7. Place in voucher/invoice folder;
8. Any disallowances must be noted with a memo to the file explaining the deduction and/or rejection and steps taken to notify the contractor. A letter should be written to the contractor explaining the deduction and/or rejection and a copy included with the invoice;
9. Confirm payment was made; and
10. Conduct periodic reviews of payments with Accounts Payable.

### **3. Correspondence**

#### **a. Processing Incoming Correspondence.**

1. Create an incoming correspondence log sheet. As correspondence is received, it should be annotated in the log and filed in the incoming correspondence folder. Completed log sheets should be filed on the right side of each folder on top of incoming correspondence. Completed log sheets can be filed in hand-written form; however, if the information is typed in an electronic document, the log can be searched electronically.
2. Incoming correspondence by serial number, CDRL number or reference, subject, and date.
3. Review the correspondence and take action as required. If the correspondence requires COR review and/or action, be sure to give the COR a suspense date and file a copy of the e-mail or memo and correspondence in a "COR Suspense Desk File."
4. If the appropriate action includes providing a response to the contractor, prepare a written response using the outgoing correspondence procedures described in paragraph (3)(b), below.

#### **b. Processing Outgoing Correspondence.**

1. Create an outgoing correspondence log sheet. Completed log sheets should be filed on the right side of each folder. Completed log sheets can be filed in hand-written form; however, if the information is typed in a Microsoft Word document, the log can be searched electronically.
2. Log all outgoing correspondence using the next available serial number, entering CDRL number or reference, subject, and date. (Note: to make outgoing correspondence easier to track, it can be helpful to include in the correspondence serial number the calendar or fiscal year and program acronym.)
3. When preparing outgoing correspondence, it is helpful to create an electronic outgoing correspondence directory to create and store electronic copies of correspondence. The serial number from the outgoing correspondence log should be typed in the top right corner of the outgoing letter. The subject line of the letter should be included in the log for quick reference.
4. The file copy of letters to the contractor should be filed in the outgoing correspondence folder with relevant documents.

### **4. Processing Modifications to the Basic Contract**

a. Preparing the Modification.

Each modification should include an SF-30 or appropriate automated procurement system modification form to meet the requirements of the specific modification. If an SF-30 is used to award the modification, the file must also contain the automated procurement system modification form.

1. A modification summary, each page of which should be annotated with the contract, requisition, modification, and page numbers. The modification summary should include:
2. A preamble summarizing all changes included in the modification.
3. A section by section, detailed description of the changed or modified parts of the contract. This description should include from/to statements to explain the change.
4. If funds are involved, Section G is always modified to show the new CLIN and appropriation data and amount as well as the affect the modification has on total contract value. This amount should match the amount on the SF-30 and automated procurement system modification form.
5. Contract change pages (with changes highlighted) for the working copy of the contract. The modification number should be printed in the top left corner of each modified page.

b. Distributing the Modification. Prepare a Distribution Sheet to document proper distribution of the modification. Annotate the Distribution Sheet with the date distribution was made.

c. Filing the Modification. The modification file should include the documents listed in the subparagraphs below. If the modification is large enough to be filed in its own folder, it is helpful to include a table of contents listing the modification and all other supporting documents included in the folder. Copies of the modified/changed contract pages should be filed in the working copy of the contract. The electronic version of the working contract should be updated to include the changed pages.

1. Signed SF-30 and automated procurement system modification form, the modification, and any associated documents (e.g., memoranda to the file, Determinations and Findings, contractor proposals, negotiation memoranda)
2. Requisition or PR.
3. Distribution Sheet.
4. Any other applicable documents listed in the "Contract Organization and File Content List-Modifications" checklist.

d. Other Actions Related to Modifications:

1. Update or create appropriate financial spreadsheets (described in paragraph 2.a); and
2. Create a Modification Summary Table. This document provides a quick reference documenting by modification number the description, type (bilateral or unilateral), dollar amount, and date of each modification. The electronic version of the table can be searched, allowing quick retrieval of modification information.

## 5. Preparing Memoranda to the File.

Typed or hand-written notes should be prepared to document telephone calls and meetings, and filed in a single folder as memoranda to the file. These notes should include a list of participants, the topic, the date, and action items assigned for each telephone call and meeting.

## 6. Maintaining the Subcontract File.

If applicable, ensure that the contract has an approved Subcontracting Plan that has been incorporated into the contract by reference and has been made an attachment to the basic contract. File copies of all subcontracting documentation in the Subcontract File. Ensure that the contractor submits the required subcontracting information to the Electronic Subcontracting Reporting System (eSRS) electronically in accordance with AMS clause 3.6.1-4 "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan (January 2010).

## 7. Processing CDRLs

a. Submission and Review of CDRLs. The contractor should submit CDRLs in hard copy or electronically in accordance with the contract (Block 15 of CDRL). Procedures should be established to ensure that all CDRLs are reviewed by the CO and responsible program/technical representatives and that comments are provided to the CO in a timely manner. Most CDRLs have a time limit for Government review and response. The document transmitting comments to the CO should be filed so it can be used to support COR/technical review.

b. Processing Comments and Changes to and Approving CDRLs. CDRL discrepancy forms should be developed to transmit comments to the contractor. Comments regarding CDRLs and approval of CDRLs should be transmitted to the contractor under a transmittal letter prepared by the CO. The transmittal letter should include re-submittal requirements if applicable. The transmittal letter should be filed in the outgoing correspondence folder. Changes to CDRLs, including extensions to submission or review dates, should include adequate consideration. These revisions must be documented in a contract modification establishing the new terms.

c. Tracking CDRLs. The CO should create a tracking system to manage submission of all CDRLs.

## 8 Appendix - Contract File Completion Statement **Revised 4/2011**

### CONTRACT FILE COMPLETION STATEMENT

Contract Administration Office (If different from the Contracting Office):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contracting Office Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contract No. \_\_\_\_\_

Last Modification No. \_\_\_\_\_

Last Call or Order No. \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Dollar Amount of Excess Funds (if any): \_\_\_\_\_

Voucher Number and Date, if Final Payment has been made:

Voucher No.: \_\_\_\_\_ Date: \_\_\_\_\_

Invoice No. and date, if final approved invoice forwarded to disbursing office or other agency/activity

Voucher No.: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## **9 Appendix – Reserved Revised 7/2014**

## **10 Appendix - Common Authorities for Modifications Revised 7/2016**

As described in AMS Procurement Guidance T3.10.1, contract terms may be modified by the Contracting Officer (CO) when in the best interest of FAA. Modifications can either be bilateral or unilateral:

1. **Bilateral modification:** a contract modification jointly agreed to by the CO and contractor.
2. **Unilateral modification:** a contract modification made by the CO that does not require concurrence by the contractor.

To issue a modification, the CO must have the authority to do so. The basis for the authority to modify a contract may be an AMS clause incorporated into a contract, a law or statute, or simply the terms and conditions of the contract.

The tables below provide varying actions that support a contract modification. The actions covered include change orders, administrative changes, supplemental agreements, and other actions that support a modification. Each table describes:

1. The type of action;
2. Whether it is a bilateral or unilateral modification; and
3. Reasons and authorities supporting a modification depending on the kind of requirement (i.e., supply, service, or construction) and type of contract (i.e., fixed-price or cost-reimbursement).

Each table also provides guidance into how each factor relates to Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract.

### Table 1: Change Orders

Unilateral Modification (SF 30: Change Order (Block 13A), Unilateral (Block 13E))

<b>Reasons for Modification</b>	<b>Authority</b>
<b>Supplies (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Drawings, Designs, or Specifications</li> <li><input type="checkbox"/> Method of Shipment or Packing</li> <li><input type="checkbox"/> Place of Delivery</li> </ul>	AMS Clause 3.10.1-12, Changes-Fixed-Price
<b>Services (no supplies to be furnished)</b>  Change to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Description of Services</li> </ul>	AMS Clause 3.10.1-12/alt1, Changes- Fixed-Price Alternate I



<input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance	
<b>Services (supplies to be furnished) (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Description of Services</li> <li><input type="checkbox"/> Time of Performance</li> <li><input type="checkbox"/> Place of Performance</li> <li><input type="checkbox"/> Drawings, Designs, or Specifications</li> <li><input type="checkbox"/> Method of Shipment or Packing</li> <li><input type="checkbox"/> Place of Delivery</li> </ul>	AMS Clause 3.10.1-12/alt2, Changes- Fixed-Price Alternate II
<b>A&amp;E or Other Professional Services (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li><input type="checkbox"/> General scope</li> </ul>	AMS Clause 3.10.1-12/alt3, Changes- Fixed-Price Alternate III
<b>Transportation Services (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Specifications</li> <li><input type="checkbox"/> Work or services</li> <li><input type="checkbox"/> Place of origin</li> <li><input type="checkbox"/> Place of delivery</li> <li><input type="checkbox"/> Tonnage to be shipped</li> <li><input type="checkbox"/> Amount of Government-furnished property</li> </ul> Place of delivery <ul style="list-style-type: none"> <li><input type="checkbox"/> Tonnage to be shipped</li> <li><input type="checkbox"/> Amount of Government-furnished property</li> </ul>	AMS Clause 3.10.1-12/alt4, Changes- Fixed-Price Alternate IV
<b>R&amp;D (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Drawings, Designs, or Specifications</li> <li><input type="checkbox"/> Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-12/alt5, Changes- Fixed-Price Alternate V
<b>Supplies (Cost-Reimbursement)</b>  Change to:	AMS Clause 3.10.1-13, Changes- Cost-Reimbursement

<input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery	
<b>Services (no supplies to be furnished) (Cost-Reimbursement)</b>  Change to:  <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance	AMS Clause 3.10.1-13/alt1, Changes- Cost-Reimbursement Alternate I
<b>Services (supplies to be furnished) (Cost-Reimbursement)</b>  Change to:  <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery	AMS Clause 3.10.1-13/alt2, Changes- Cost-Reimbursement Alternate II
<b>Construction (Cost-Reimbursement)</b>  Change to:  <input type="checkbox"/> Plans and Specifications or Instructions	AMS Clause 3.10.1-13/alt3, Changes- Cost-Reimbursement Alternate III
<b>Facilities (Cost-Reimbursement)</b>  Change to:  <input type="checkbox"/> General Scope	AMS Clause 3.10.1-13/alt4, Changes- Cost-Reimbursement Alternate IV
<b>R&amp;D (Cost-Reimbursement)</b>  Change to:  <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Place of Inspection, Delivery, or Acceptance	AMS Clause 3.10.1-13/alt5, Changes- Cost-Reimbursement Alternate V
<b>Time and Materials or Labor Hours</b>	AMS Clause 3.10.1-14, Changes- Time and Materials or Labor Hours

<p>Change to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Description of Services</li> <li><input type="checkbox"/> Time of Performance</li> <li><input type="checkbox"/> Place of Performance</li> <li><input type="checkbox"/> Drawings, Designs, or Specifications</li> <li><input type="checkbox"/> Method of Shipment or Packing</li> <li><input type="checkbox"/> Place of Delivery</li> <li><input type="checkbox"/> Amount of Government Furnished Property</li> </ul>	
<p><b>Construction, Dismantling, Demolition, or Removal of Improvements</b></p> <p>Change to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Drawings, Designs, or Specifications</li> <li><input type="checkbox"/> Method or Manner of Performance</li> <li><input type="checkbox"/> Government-Furnished Facilities, Equipment, Materials, Services, or</li> </ul>	AMS Clause 3.10.1-15, Changes-Construction, Dismantling, Demolition, or Removal of Improvements
<p>Site</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Accelerate the Performance of the Work</li> </ul>	
<p><b>Construction (Changed Conditions)</b></p> <p>Change to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Drawings or Specification within the Scope of the Contract</li> </ul>	AMS Clause 3.10.1-16, Changes and Changed Conditions

**Table 2: Administrative Changes**

Unilateral Modification (SF 30: Administrative Change (Block 13B), Unilateral (Block 13E))

Reasons for Modification	Authority
Accounting Code Change	AMS Procurement Guidance T3.10.1
COR Change	AMS Procurement Guidance T3.10.1
Change-of-Name Agreement	AMS Procurement Guidance T3.10.1

**Table 3: Supplemental Agreements**

Bilateral Modifications (SF 30: Supplemental Agreement (Block 13C), Bilateral (Block 13E))

<b>Reasons for Modification</b>	<b>Authority</b>
Negotiated Price or Other Adjustment Resulting from Changes Clause (Increase or Decrease)	Reference Applicable Changes Clause
Change in Term or Conditions or Order	Reference Applicable Changes Clause
Adjustments to Wage Determinations and collective bargaining agreements	AMS Clause 3.6.2-30, Fair Labor Standards Act and Service Contract Act-- Price Adjustment (Multiple Year and Option Contracts)
Novation Agreement and Change-of-Name	AMS Procurement Guidance T3.10.1 & AMS Clause 3.10.1-25, Novation and Change-of-Name Agreements
Settlement of Agreement Under the Disputes Clause	AMS Clause 3.9.1-1, Contract Disputes
Assignment of Claims	AMS Clause 3.3.1-15, Assignment of Claims
Extension of Delivery Date of Performance Period	Reference Applicable Changes Clause

**Table 4: Other**

Unilateral Modifications (SF 30: Other (Block 13D), Unilateral (Block 13E))

<b>Reasons for Modification</b>	<b>Authority</b>
Option for Increased Quantity (Specific Line Item)	AMS Clause 3.2.4-32, Option for Increased Quantity
Option for Increased Quantity (Separately Priced Line Item)	AMS Clause 3.2.4-33, Option for Increased Quantity- Separately Priced Line Item
Option to Extend Services	AMS Clause 3.2.4-34, Option to Extend Services
Option to Extend the Term of the Contract	AMS Clause 3.2.4-35, Option to Extend the Term of the Contract
Termination for Convenience of the Government (Fixed-Price)	AMS Clause 3.10.6-1, Termination for Convenience of the Government (Fixed-Price)
Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)	AMS Clause 3.10.6-2, Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)
Termination (Cost-Reimbursement)	AMS Clause 3.10.6-3, Termination (Cost-Reimbursement)
Termination (Cost-Reimbursement) (Construction)	AMS Clause 3.10.6-3/alt1,

	Termination (Cost-Reimbursement) Alternate I
Termination (Cost-Reimbursement) (Contracts with Agencies of the Federal Government, or state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt2, Termination (Cost-Reimbursement) Alternate II
Termination (Cost-Reimbursement) (Construction with agencies of the Federal Government, state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt3, Termination (Cost-Reimbursement) Alternate III
Termination (Cost-Reimbursement) (T&M and LH)	AMS Clause 3.10.6-3/alt4, Termination (Cost-Reimbursement) Alternate IV
Termination (Cost-Reimbursement) (T&M and LH with agencies of the Federal Government, state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt5, Termination (Cost-Reimbursement) Alternate V
Default (Fixed-Price Supply and Service)	AMS Clause 3.10.6-4, Default (Fixed-Price Supply and Service)
Default (Fixed-Price R&D)	AMS Clause 3.10.6-5, Default (Fixed-Price Research and Development)
Default (Fixed-Price Construction)	AMS Clause 3.10.6-6, Default (Fixed Price Construction)
Availability of Funds	AMS Clause 3.3.1-10, Availability of Funds
Availability of Funds for the Next Fiscal Year	AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year
Excusable Delays	AMS Clause 3.10.6-7, Excusable Delays
Government Delay of Work	AMS Clause 3.10.1-11, Government Delay of Work
Government Property	AMS Clause 3.10.3-2, Government Property - Basic Clause
Government Property (Fixed-Price)	AMS Clause 3.10.3-2/alt1, Government Property - Basic Clause Alternate I
Government Property (T&M/LH or Cost Reimbursement)	AMS Clause 3.10.3-2/alt2, Government Property - Basic Clause Alternate II
Government Property Consolidated Facilities	AMS Clause 3.10.3-3, Government Property Consolidated Facilities
Government Property (Facilities Acquisition)	AMS Clause 3.10.3-6, Government Property (Facilities Acquisition)
Government Property (Facilities Use)	AMS Clause 3.10.3-7, Government Property - Facilities Use
Government Property (Facilities Use)	AMS Clause 3.10.3-7/alt1,

(Research)	Government Property (Facilities Use). Alternate <b>I</b>
Suspension of Work	AMS Clause 3.10.1-8, Suspension of Work
Disputes (Continued Performance)	AMS Clause 3.9.1-1, Contract Disputes
Variation in Quantity (Fixed-Price contracts for supplies and services that involve the furnishing of supplies)	AMS Clause 3.2.2.8-2, Variation in Quantity
Variation in Estimated Quantities (Fixed-Price Construction)	AMS Clause 3.2.2.8-4, Variation in Estimated Quantities

### **Table 5: Other**

Bilateral Modifications (SF 30: Other (Block 13D), Bilateral (Block 13E))

<b>Reasons for Modification</b>	<b>Authority</b>
Addition of new work using a single source procurement (out of scope changes, additional quantities, time extensions that constitute new work, etc.)	AMS Policy 3.2.2.4

## **11 FAA CPARS Guide Revised 10/2014**

### **FAA Use of Contractor Performance Assessment Reporting System (CPARS)**

#### **1.0 Introduction**

This Guide assigns responsibilities and provides procedures for systematically assessing contractor performance in accordance with AMS Procurement Guidance T3.10.1A16.

#### **1.1 Background**

The Contractor Performance Assessment Reporting System (CPARS) is a paperless contracting initiative housed and maintained by the DoD. Since the National Institutes of Health (NIH) discontinued use of its Contractor Performance System (CPS), CPARS has been mandated for use across all Federal Government agencies as the “feeder” system for entering contract performance data into the Government-wide Past Performance Information Retrieval System (PPIRS). Use of the CPARS is strongly encouraged, as it ensures that the FAA’s contract performance evaluations will be entered into the PPIRS database to enhance the centralized data repository of contractor performance information. All CPARS evaluations must be initiated and completed electronically within the system. This Guide refers only to the CPARS module under which performance evaluations for most CPARS evaluations will be done. Any performance evaluations for architect-engineer or construction

contracts will be done under the separate ACASS and CCASS modules respectively. Information on all modules is available on the CPARS website.

## **1.2 Purpose**

The primary purpose of the CPARS is to ensure current and accurate data on contractor past performance is available for use in source selections. The completed past performance assessments are available through PPIRS. In addition to the sources of information outlined in AMS Procurement Guidance T3.2.2A.3, the Contracting Officer may use information available through PPIRS to support responsibility determinations of prospective contractors. Senior FAA and contractor officials may also use the information derived from the CPARS for other management purposes consistent with AMS Guidance.

CPARS assesses a contractor's performance, both positively and negatively as appropriate, providing a record on a given contract during a specified period of time. Each assessment must be based on objective data (or measurable, subjective data when objective data is not available) supportable by program and contract management data (see Section 1.4). CPARS performance expectations should be addressed in the Government and contractor's initial post-award meeting.

## **1.3 Responsibility for Completing CPARS Assessments**

Responsibility for completing quality CPARS assessments in a timely manner rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order execution. The AO may be supported in this process by the Assessing Official Representative (AOR). The AOR may be the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Task Monitor for tasks under IDIQ contracts, or any other individual familiar with the contractor's performance. The AO and AOR shall be responsible for entering the ratings and narratives for each evaluation performed.

The CPARS process is designed with checks-and-balances to facilitate the objective and consistent evaluation of contractor's performance. Both the Government's and contractor's perspectives are captured in the CPARS evaluation.

## **1.4 CPAR Evaluation Methodology**

The value of the CPARS to a future source selection team is dependent on the level of effort the AO takes in preparing a quality and timely narrative to accompany the CPAR's ratings. It is paramount the AO submits a rating consistent with the definitions of each rating and thoroughly describes the circumstances supporting the rating. The definitions of each rating, together with related guidance for preparing the narrative, are provided in Attachment 1.

Each evaluation must be based on objective data (or subjective data when objective data is not available) supported by program and contract management records. The following sources of data are recommended:

- ☐ Contractor operations reviews
- ☐ Status and progress reviews
- ☐ Production and management reviews
- ☐ Management and engineering process reviews (e.g. risk management, requirements management, etc.)
- ☐ Cost performance reports and other cost and schedule metrics
- ☐ Other program measures and metrics such as:
  - o Measures of progress and status of critical resources
  - o Measures of product size and stability
  - o Measures of product quality and process performance
  - o Customer feedback/comments and satisfaction ratings
- ☐ Systems engineering and other technical progress reviews
- ☐ Technical interchange meetings
- ☐ Physical and functional configuration audits
- ☐ Quality reviews and quality assurance evaluations
- ☐ Subcontracting reports
- ☐ Earned contract incentives and award fee determinations

Subjective assessments concerning the cause or ramifications of the contractor's performance may be provided; however, speculation or conjecture is prohibited.

### **1.5 Uses of Summary CPAR Data**

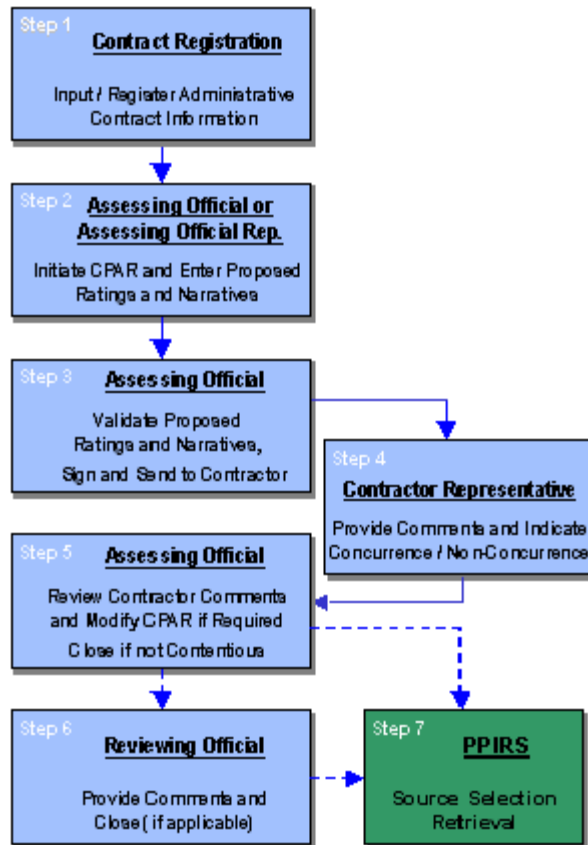
Summary data from the CPARS database or from the reports themselves may be used to measure the status of industry performance and support continuous process improvement. Further analysis of data from the CPARS database may be accomplished by the CPARS Focal Point for internal Government use but is not authorized for release outside the Government.

### **1.6 Change-of-Name/Novation**

In the event of a contract novation or the change of the contractor's name, see AMS Procurement Guidance T3.10.1A.8 for guidance in these circumstances since the Dun & Bradstreet Universal Numbering System (DUNS), Commercial and Government Entity (CAGE) codes and contractor names may be affected in the CPARS. The AO of each contract affected by any such changes is ultimately responsible for ensuring that the contract information in the CPARS is current and correct.

### **1.7 Basic Workflow Diagram**





## 2.0 Thresholds for Mandatory Evaluations

All contracts or orders which exceed the following thresholds must include the applicable contract clause addressing CPARS evaluations and have an evaluation completed in CPARS:

- ☐ Services contracts exceeding \$5,000,000;
- ☐ Supply contracts exceeding \$10,000,000;
- ☐ Construction contracts exceeding \$10,000,000
- ☐ Research and development contracts exceeding \$5,000,000

In addition to contracts that must have CPARS evaluations performed, FAA may choose to perform CPARS evaluations for contracts that do not meet the above thresholds.

## 2.1 CPARS for Indefinite-Delivery Contracts, Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs)

For indefinite-delivery contracts and BPAs, but excluding Basic Ordering Agreements, (BOAs) the dollar value of individual orders is combined to determine if the threshold to require completing CPARS evaluation(s) has been met.

The cognizant program office for the contract or agreement shall determine how CPARS evaluations' will be completed:

- ☐ One CPARS evaluation for each order,
- ☐ By combining all orders into one CPARS evaluation), or
- ☐ Combining similar orders together. For example, orders for one type of service are combined into one evaluation and orders for a different type of service are combined into separate evaluations.

Combining orders into one CPARS evaluation may not be feasible, when contracts are used by multiple activities within the agency, or when individual orders are significantly different. The cognizant program office should avoid combining into one CPARS evaluation multiple orders that are for different products or services or those that are different contract types.

When orders are combined, the narrative describing the contractor's performance on each order, both positive and negative, must be included so that the breadth and quality of information is available for source selection official use.

If a consolidated CPARS evaluation for orders is completed, the period of performance for the assessment is based on the effective date/award date of the basic contract and each subsequent, exercised option year period. Where possible, each order number and title may be included in Block 17. Narrative must be provided on the contractor's performance on each order (in Block 20) so that the breadth and quality of information on the order is available for source selection official use.

If separate CPARS for any single orders are completed, the period of performance for the assessments is based on the effective date/award date of each individual order.

For BOA orders, a CPARS evaluation must only be completed on each order meeting the threshold.

## **2.2 CPARs for Orders Under Federal Supply Schedules**

For CPARS evaluations on Federal Supply Schedule Orders, the period of performance for the assessment must be based on the effective date/award date of the individual order.

## **2.3 Joint Ventures**

When the joint venture on a contract using CPARS has a unique CAGE code and DUNS number, a single CPAR will be prepared for the joint venture using those CAGE and DUNS codes. If the joint venture does not have a unique CAGE code and DUNS code, separate CPARS containing identical narratives will be prepared for each participating contractor and will reference that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

## **2.4 Letter or Ceiling Priced Contracts**

Assessment information regarding performance under letter or ceiling priced contracts using

CPARS must be included in the annual evaluation. If the final negotiated contract type is not a cost-type contract, cost information for the period such an action was in effect (if applicable) must be included under the Cost rating element in the CPARS. If the final negotiated contract type is a cost-type, cost information for the entire period of performance must be included under the Cost rating element. The supporting narrative must fully explain the contractor's performance during the action, including throughout definitization. The contractor's performance under the undefinitized period must be separately identified but considered in the overall CPARS.

## **2.5 Subcontractor Assessments**

Assessments shall not be completed on subcontractor performance. However, an assessment shall address the prime contractor's ability to manage and coordinate subcontractor efforts, if applicable, as well as compliance with requirements of the Small Business Subcontracting Program.

## **3.0 FAA Responsibilities**

The FAA will:

- ☐ Establish procedures to implement CPARS. These procedures shall include training requirements for Focal Points, AOs, ROs, and Contractor Representatives to ensure procedures for monitoring the timely completion of reports, report integrity (e.g., quality of reports) and overall CPARS system administration are in place.
- ☐ Establish CPARS Focal Point(s)
- ☐ Register new contracts using CPARS in the system within 30 calendar days after contract award with the information for blocks 1-14 of the CPARS form. Registering the contract will establish the record and facilitate subsequent CPARS reporting.

## **3.1 CPARS Roles and Responsibilities**

### **3.1.1 Agency Point of Contact (DOT Office of the Senior Procurement Executive (M-60))**

The Agency Point of Contact is DOT, which responsible for administrative oversight of the CPARS process. Duties include:

- ☐ Obtaining Command Point of Contact access to CPARS
- ☐ Assigning of Senior Command Official(s)
- ☐ Serving on CPARS Operational Requirements Committee
- ☐ Monitoring to ensure effective implementation of the CPARS process

### **3.1.2 Senior Command Official (FAA Acquisition Policy Group (AAP-100))**

- ☐ Obtaining Senior Command Official access to CPARS by contacting the Agency Point of Contact
- ☐ Coordination and submittal of subordinate organization CPARS Focal Points to the CPARS Program Office

- ☐ Assistance to subordinate organization CPARS Focal Points (e.g., training, monitoring, and policy)
- ☐ Evaluating quality and compliance metrics of subordinate organizations
- ☐ Providing metrics for management, as requested
- ☐ Reviewing and providing subordinate organization issues to the CPARS Focal Point and/or the CPARS Program Office

### **3.1.3 Focal Point (FAA Procurement and Information Services Team (AAP-120))**

- ☐ Registering contracts using CPARS in the system within 30 calendar days of contract award
- ☐ Training in their prospective agency
- ☐ Assigning access authorization for FAA and contractor personnel (complete contract authorization based on information from the Contracting Officer, COR/Project Officer, and contractor personnel authorized to appoint a designated representative)
- ☐ CPARS account management and maintenance
- ☐ Control and monitoring of CPARS, including the status of overdue evaluations
- ☐ Establishing processes to monitor quality reports in a timely manner
- ☐ Troubleshoot user errors-if cannot be mitigated, contact the CPARS Help Desk

### **3.1.4 Assessing Official (AO) (FAA COR, Program/Project Manager, or Program Office Representative)**

- ☐ Responsible for completing the CPARS
- ☐ Reviewing comments from the designated contractor representative once the evaluation has been returned by the contractor or after 30 days have lapsed
- ☐ After receiving and reviewing the contractor's comments on the CPAR, the AO may revise the assessment, including the narrative. The AO will notify the contractor of any revisions made to a report as a result of the contractor's comments. Such a revised report will not be sent to the contractor for further comment. The contractor will have access to both the original and final reports in CPARS when the FAA finalizes the evaluation.

### **3.1.5 Contractor Representative**

The contractor on a given contract must designate two representatives to whom the evaluations shall be sent automatically and electronically. The name, title, e-mail address and phone number of the designated contractor representative must be provided to the Contracting Officer who will, in turn, provide that information to the CPARS Focal Point for authorization access. Any changes in designated contractor personnel will be the sole responsibility of the contractor to inform the Contracting Officer or Contract Specialist who shall in turn forward the information to the CPARS Focal Point. The designated contractor representative has the authority to:

- ☐ Receive the Government evaluation from the AO
- ☐ Review, comment and return the evaluation within 60 calendar days. If the contractor desires a meeting or teleconference with the AO to discuss the CPAR, it must be requested, in writing, no later than seven calendar days from the receipt of the CPAR. The meeting or teleconference shall be held during the contractor's 60-day review period.

### **3.1.6 Reviewing Official (RO) (FAA Contracting Officer)**

The Reviewing Official is the final arbiter when there is disagreement between the government and the contractor. The RO must review and sign the assessment when the contractor indicates non-concurrence with the CPARS or when the contractor is non-responsive. The RO has the authority to:

- ☐ Provide narrative comment (the Reviewing Official's comments supplement those provided by the AO. They do not replace the ratings provided by the AO).
- ☐ Sign the CPARS (at this point it is considered final and is posted in the CPARS and is available for Source Selection Official use in the PPIRS)
- ☐ Ensuring a copy of the completed evaluation is placed in the contract file

## **4.0 Frequency of Reporting**

Generally, reporting is done on an annual basis. When an out-of-cycle CPARS is required, however, it is acceptable to complete two CPARS in a given year for the contract. Out-of-cycle CPARS do not alter the annual reporting requirement. For example, if the regular CPARS period of performance ends on 30 September 2012 and an out-of-cycle CPARS is completed which covers a performance period that ends on 1 May 2012, the next intermediate CPARS report is still required to cover the period of performance from 1 October 2011 to 30 September 2012. A period of performance overlap is only permitted when an out-of-cycle CPARS report has been prepared.

### **4.1 Initial Reports**

An initial CPARS is required for new contracts using CPARS that have a period of performance greater than 365 calendar days. The initial CPARS must reflect evaluation of at least the first 180 calendar days of performance under the contract, and may include up to the first 365 calendar days of performance. For contracts with a period of performance of less than 365 calendar days, see "Final Reports" below.

### **4.2 Intermediate Reports**

Intermediate CPARS are required every 12 months throughout the entire period of performance of the contract after the initial report and up to the final report. An intermediate CPARS is also required:

- ☐ Upon a significant change in the quality of contractor performance, or
- ☐ Upon a significant change within the agency, provided that a minimum of six months of performance has occurred, such a change in program management responsibility:

An intermediate CPARS must be done prior to any transfer of Assessing Official duties from one individual to another to ensure continuity.

An intermediate CPARS is limited to contractor performance occurring after the preceding normal cycle CPARS. To improve efficiency in preparing the CPARS, the CPARS may be completed

together with other reviews (e.g., award fee determinations, major program events, program milestones and quality assurance surveillance records).

#### **4.3 Final Report**

A final CPARS must be completed upon contract completion or delivery of the final major end item on contract. Final Reports are to be prepared on all contracts using CPARS with a period of performance of less than 365 calendar days. The final CPARS does not include cumulative information but is limited to the period of contractor performance occurring after the preceding CPARS. The CPARS Focal Point has the authority to approve extensions when special circumstances arise.

#### **4.4 Out-of-Cycle Reports**

An Out-of-Cycle CPARS may be appropriate when there is a significant change in performance that alters the assessment in one or more evaluation area(s). The contractor may request a new assessment or the AO may unilaterally prepare a new evaluation and process a new CPARS through the automated CPARS system. The determination as to whether or not to update an evaluation will be made solely by the AO. The evaluation will follow the same workflow as the annual evaluations and will be posted electronically in CPARS and PPIRS after review/coordination through the FAA and contractor.

#### **4.5 Addendum Reports**

Addendum reports may be prepared, after the final past performance evaluation, to record the contractor's performance relative to contract closeout, warranty performance and other administrative requirements.

### **5.0 Records Retention and Disposition**

All records created under this document must be retained and disposed of in accordance with agency procedures and any applicable program security requirements.

#### **5.1 CPARS Markings and Protection**

Anyone granted access to CPARS is responsible for ensuring that all CPARS are appropriately marked and handled. All CPARS forms, attachments, and working papers must be marked "FOR OFFICIAL USE ONLY/SOURCE SELECTION INFORMATION". Caution must be exercised in transmitting any CPARS as an attachment to an email message.

CPARS may also contain information that is proprietary to the contractor. Information contained on the CPARS, such as trade secrets, protected commercial information, or financial data obtained from the contractor in confidence, must be protected from unauthorized disclosure. AOs and ROs must annotate on the CPARS if it contains material that is a trade secret, etc., to ensure that future readers of the evaluations in the PPIRS are informed and will protect as required. The following guidance applies to protection both internal and external to the FAA.

### 5.1.1 Internal FAA Protection

CPARS must be treated as source selection information at all times. Information contained in the CPARS must be protected in the same manner as information contained in source selection files.

### 5.1.2 External Government Protection

Due to the sensitive nature of CPARS, disclosure of CPARS data to contractors other than the contractor that is the subject of the report, or other entities outside the FAA, is not authorized. Disclosure of CPARS data to advisory and assistance support contractors other than the contractor that is the subject of the report is strictly prohibited. A contractor will be granted access to its CPARS maintained in CPARS by the appropriate Focal Point.

### 5.2 Freedom of Information Act (FOIA)

Contractor performance information is privileged source selection information. It is also protected by the Privacy Act and is not releasable under the Freedom of Information Act. Performance assessments may be withheld from public disclosure under Exemption 5 of the Freedom of Information Act. The FOIA office must coordinate the request with the CPARS PMO and local FAA Focal Point.

### 5.3 Use of CPARS in Source Selection

CPARS provides an assessment of ongoing performance of contractors. Each report consists of a narrative evaluation by the AO, the contractor's comments, if any, relative to the assessment and the RO's acknowledged consideration and reconciliation of significant discrepancies between the AO's evaluation and the contractor's comments. Source selection officials retrieve CPARS by using the PPIRS.

### 5.4 CPARS Format

For information on the CPARS format see Attachments 2, 3, or the [CPARS website](#).

#### Attachment 1

Evaluation Rating Definitions (Excluding Utilization of Small Business)		
Rating	Definition	Note
Dark Blue/Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there must

	the contractor was highly effective.	have been NO significant weaknesses identified.
Purple/Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor was effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There must have been no significant weaknesses identified.
Green/Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor recovered from without impact to the contract. There must have been NO significant weaknesses identified. Contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
Yellow/Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating must be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).
Red/Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and



	The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).
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NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the assessment status.

NOTE 2: N/A (not applicable) must be used if the ratings are not going to be applied to a particular area for evaluation.

<b>Evaluation Ratings Definitions (Utilization of Small Business)</b>		
<b>Rating</b>	<b>Definition</b>	<b>Note</b>
Dark Blue/Exceptional	Exceeded all negotiated subcontracting goals or exceeded at least one goal and met all of the other negotiated subcontracting goals for the current period. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB). Complied with AMS, 3.6.1-3 Utilization of Small, Small Disadvantaged and Women-Owned, and Service-Disabled Veteran Owned Small Business Concerns (February 2009).	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. Also, there must have been no significant weaknesses identified.

	Exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	
Purple/Very Good	Met all of the negotiated subcontracting goals in the traditional socio- economic categories (SB, SDB and WOSB) and met at least one of the other socio-economic goals (SDVOSB) for the current period. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, VOSB, and SDVOSB. Complied with AMS, 3.6.1-3. Met or exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. There must be no significant weaknesses identified.
Green/Satisfactory	Demonstrated a good faith effort to meet all of the negotiated subcontracting	To justify a Satisfactory rating, there must have been only minor problems, or

	goals in the various socio-economic categories for the current period. Complied with AMS, 3.6.1-3. Met any other small business participation requirements included in the contract. Fulfilled the requirements of the subcontracting plan included in the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	major problems the contractor has addressed or taken corrective action. There must have been no significant weaknesses identified.
Yellow/Marginal	Deficient in meeting key subcontracting plan elements. Deficient in complying with AMS, 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.	To justify a Marginal rating, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating must be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency.
Red/Unsatisfactory	Noncompliant with AMS 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary	To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however,

	Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.	could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the Contracting Officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required and any other applicable clauses.
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NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change assessment status.

NOTE 2: Zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor will be considered to have met the goal for any socio- economic category where the goal negotiated in the plan was zero.

## **Attachment 2 Instructions for Completing a Systems CPARS Evaluation**

A2.1 The Systems Business Sub-Sectors (not all of which are applicable to FAA procurements) are Aircraft, Shipbuilding, Space, Ordnance, Ground Vehicles, Training Systems, or Other Systems.

**A2.2 Block 1 Name/Address of Contractor.** State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) Code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

**A2.3 Block 2 Type Report.** Indicate whether the CPARS is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

**A.2.4 Block 3 Period of Performance Being Assessed.** State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

**A2.4.1 Period of Performance for Delayed Starts, Protests or Phase In Periods.** In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPARS Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPARS has been processed.

**A2.4.2 Period of Performance for Intermediate/Final Reports.** CPARS assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPARS Focal Point.

**A2.4.3 Period of Performance for Out-of-Cycle Reports.** Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to CPARS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of-Cycle report posted in the CPARS AIS (and ultimately the PPIRS), the CPARS will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

**A2.3.5 Block 4a Contract Number.** Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order/call number field should be used to reflect the contract/schedule/agreement number for the order/call.

**A2.6 Block 4b Business Sector and Sub Sector.** Select Services/IT/Operations

**A2.7 Block 5 Contracting Office (Organization and Code).** Identify the contracting office symbol.

**A2.8 Block 6 Location of Contract Performance.** Provide a geographical reference (e.g., nearest city and installation name).

**A2.9 Block 7a Contracting Officer.** Self-explanatory.

**A2.9.1 Block 7b Phone Number.** Include commercial phone number in the following format:  
(XXX) XXX-XXXX

**A2.10 Block 8a Contract Award Date.** Identify the date of contract award or select the date on the on-screen, drop-down calendar.

**A2.10.1 Block 8b Contract Effective Date.** Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar only if that date is later than Block 8a, Contract Award Date.

**A2.11 Block 9 Contract Completion Date.** Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

**A2.12 Block 10 Contract Percent Complete/Delivery Order Status.** State the current percent of the contract that is complete. If Cost Performance Reports (CPR) or Cost/Schedule Status Reports (C/SSR) data is available, calculate percent complete by dividing cumulative Budgeted Cost of Work Performed (BCWP) by Contract Budget Base (CBB) (less management reserve) and multiply by 100. CBB is the sum or negotiated cost plus estimated cost of authorized undefinitized work. If CPR or C/SSR data is not available, estimate percent complete by dividing the number of months elapsed by total number of months in contract period of performance and multiplying by 100. In the event an Indefinite Delivery contract is utilized, estimate the percent complete.

**A2.13 Block 11 Awarded Value.** Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order/call.

**A2.14 Block 12 Current Contract Dollar Value.** State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs/BPAs where orders/calls will be assessed individually, state the current obligated amount of the individual order/call, including modifications.

**A2.15 Block 13 Basis of Award.** Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

**A2.16 Block 14 Contract Type.** Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

**A2.17 Block 15 Key Subcontractors and Description of Effort Performed.** Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort

**A2.18 Block 16 (Systems) Program Title and Phase of Acquisition.** Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify overall program phase and

production lot (for example, concept development, engineering and manufacturing development, low-rate initial production, or full-rate production (Lot 1)), and any specific aspects of the phase of the acquisition being evaluated. Identify milestone phases, if applicable. Block 16 (Ship Repair and Overhaul) – Type of Availability. Not applicable to FAA contracts.

**A2.19 Block 17 Contract Effort Description.** This section is of critical importance to future source selection teams. The description should be detailed enough to assist a future source selection officials in determining the relevance of this program to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. For intermediate CPARs, a description of key milestone events that occurred in the review period may be beneficial (e.g., Critical Design Review (CDR), Functional Configuration Audit (FCA)), as well as major contract modifications during the period. Ensure all acronyms are identified.

Provide a complete description of the contract effort that identifies key technologies, components, subsystems, and requirements. For task/delivery/job order contracts, state the number of tasks issued during the period, tasks completed during the period, and tasks that remain active.

For contracts that include multiple functional disciplines or activities, separate them into categories to:

1. Reflect the full scope of the contract, and
2. Allow grouping of similar work efforts within the categories to avoid unnecessary segregation of essentially similar specialties or activities. Each category or area should be separately numbered, titled and described within Block 17 to facilitate cross- referencing with the evaluation of the contractor's performance within each category in Blocks 18 and 19.

**A2.20 Small Business Utilization.** Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR)/Summary Subcontracting Report (SSR)?

**A2.21 Block 18 Evaluation Areas.** Evaluate each area based on the following criteria:

**A2.21.1** Each area assessment must be based on objective data that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the AORs, AOs and other Government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, etc.

**A2.21.2** The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor meets an extremely tight schedule, a dark blue (exceptional) may be appropriate, or meeting a tight

schedule with few delinquencies, a green (satisfactory) with a plus sign assessment may be given in recognition of the inherent schedule risk. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A2.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A2.21.4 Many of the evaluation areas in Block 18 represent groupings of diverse elements. The AO should consider each element and use the area rating to highlight significant issues. In addition, the AO should clearly focus on the contractor's "results" as they may be appropriate for the period being assessed in determining the overall area rating.

A2.21.5 Evaluate all areas which pertain to the contract under evaluation unless they are not applicable (N/A).

A2.21.6 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A2.21.7 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A2.21.8 Ratings will be in accordance with the definitions described in Attachment 2, "Evaluation Ratings Definitions."

**A2.22 Block 18a Technical (Quality of Product).** This element is comprised of an overall rating and six sub-elements. Activity critical to successfully complying with contract requirements must be assessed within one or more of these sub-elements. The overall rating at the element level is the AO's integrated evaluation as to what most accurately depicts the contractor's technical performance or progress toward meeting requirements. This assessment is not a roll-up of the sub-element assessments.

**A2.22.1 Block 18a(1) Product Performance.** Assess the achieved product performance relative to performance parameters required by the contract.

**A2.22.2 Block 18a(2) Systems Engineering.** Assess the contractor's effort to transform operational needs and requirements into an integrated system design solution.

**A2.22.2.1** Areas of focus should be: the planning and control of technical program tasks, the quality and adequacy of the engineering support provided throughout all phases of contract execution, the integration of the engineering specialties, management of interfaces, interoperability, and the management of a totally integrated effort of all engineering concerns to meet cost, technical performance, and schedule objectives.



A2.221.2.2 System engineering activities ensure that integration of these engineering concerns is addressed up-front and early in the design/development process. The assessment should cover these disciplines: systems architecture, design, manufacturing, integration and support, configuration control, documentation, test and evaluation.

A2.22.2.3 The assessment for test and evaluation should consider success/problems/failure in developing test and evaluation objectives; planning (ground/air/sea) test, simulations and/or demonstrations; in accomplishing those objectives and on the timeliness of coordination and feedback of the test results (simulations/demonstrations) into the design and/or manufacturing process.

A2.22.2.4 Other activities include production engineering, logistics support analysis, supportability considerations (maintenance personnel/skills availability or work hour constraints, operating, and cost constraints, allowable downtime, turnaround time to service/maintain the system, standardization requirements), survivability, human factors, reliability, quality, maintainability, availability, inspection, etc. Although some of these activities will be specifically addressed in other elements/sub-elements (such as product assurance), the focus of the assessment of systems engineering is on the integration of those specific disciplines/activities.

A2.22.2.5 The assessment of systems engineering needs to remain flexible to allow the evaluator to account for program-unique technical concerns and to allow for the changing systems engineering environment as a program moves through the program phases, e.g., Engineering and Manufacturing Development, Production.

**A2.22.3 Block 18a(3) Software Engineering.** Assess the contractor's success in meeting contract requirements for all applicable software engineering based activities and processes.

A2.22.3.1 Software engineering activities include, as appropriate, software development (design, code, and unit test); application of reuse, COTS, and other non-developmental software components; integration (including software component integration, system integration and test, and acceptance test support); and sustainment. Software processes include, for example: software size, effort, and schedule estimation; requirements analysis, development, and management; software configuration management; software risk identification and management; metrics collection and analysis, technical reviews, decision analysis, and software quality assurance and control, each as they specifically address software engineering activities.

A2.22.3.2 Consider the contractor's success with respect to:

1. Planning a software development, integration, and testing effort that includes compatible cost, schedule, and performance baselines
2. Delivering expected software driven capabilities on cost and on schedule
3. Effective software metrics collection/analysis and status monitoring/reporting that provide the software visibility necessary to identify timely corrective actions and appropriately execute them
4. Staffing with the software knowledge, skills, and abilities needed to execute the contract across the lifecycle; timely assignment of the appropriate numbers of software staff

5. Awareness and control of software size and stability to enable tracking and allowing growth according to vetted enhancements vice scope creep
6. Effective testing and integration of developed software within the larger system test and evaluation effort
7. Effective processes to acquire, integrate, and test commercial off-the-shelf software and to achieve planned software reuse
8. Achieving software assurance
9. Consistent application of documented software engineering and management processes, including technical reviews, in alignment with contract requirements

**A2.22.4 Block 18a(4) Logistic Support/Sustainment.** Assess the success, as appropriate, of the contractor's performance in accomplishing logistics planning. For example, maintenance planning; manpower and personnel; supply support; support equipment; technical provisioning data; training and support; computer resources support; facilities; packaging, handling, storage and transportation; design interface; the contractor's performance of logistics support analysis activities and the contractor's ability to successfully support fielded equipment. When the contract requires technical and/or engineering data deliverables, the cognizant cataloging and/or standardization activity comments should be solicited.

**A2.22.5 Block 18a(5) Product Assurance.** Assess how successfully the contractor meets program quality objectives; e.g., production, reliability, maintainability, inspection, testability, and system safety, and controls the overall manufacturing process. The PM must be flexible in how contractor success is measured, e.g., data from design test/operational testing successes, field reliability and maintainability and failure reports, user comments and acceptance rates, improved subcontractor and vendor quality, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall manufacturing process to include material control, shop floor planning and control, status and control, factory floor optimization, factory design, and factory performance.

**A2.22.6 Block 18a(6) - Other Technical Performance.** Assess all the other technical activity critical to successful contract performance. Identify any additional assessment aspects that are unique to the contract or that cannot be captured in another sub-element.

**A2.23 Block 18b Schedule.** Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, administrative requirements, etc. Assess the contractor's adherence to the required delivery schedule by assessing the contractor's efforts during the assessment period that contribute to or affect the schedule variance. Also, address significance of scheduled events (e.g., design reviews), discuss causes, and assess the effectiveness of contractor corrective actions.

**A2.24 Block 18c Cost Control.** (Not Applicable for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Is the contractor experiencing cost growth or underrun, discuss the causes and contractor-proposed solutions for the cost overruns. For contracts where task or contract sizing is based upon contractor-provided person hour estimates, the relationship of these estimates to ultimate

task cost should be assessed. In addition, the extent to which the contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in each work effort should be assessed.

A2.24.1 Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the Cost element. The contractor's performance under the UCA must be separately identified but considered in the overall annual ratings.

**A2.25 Block 18d Management.** This element is comprised of an overall rating and three sub-elements. Activity critical to successfully executing the contract must be assessed within one or more of the sub-elements. This overall rating at the element level is the AO's integrated assessment as to what most accurately depicts the contractor's performance in managing the contracted effort. It is not a roll-up of the sub-element assessments.

A2.25.1 Block 18d(1) Management Responsiveness. Assess the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals (especially responses to change orders, Engineering Change Proposals (ECPs), or Letter or Ceiling Priced Contracts), the contractor's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction. Consider the contractor's responsiveness to the program as it relates to meeting contract requirements during the period covered by the report.

A2.25.2 Block 18d(2) Subcontract Management. Assess the contractor's success with timely award and management of subcontracts. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.

A2.25.3 Block 18d(3) Program Management and Other Management. Assess the extent to which the contractor discharges its responsibility for integration and coordination of all activity needed to execute the contract; identifies and applies resources required to meet schedule requirements; assigns responsibility for tasks/actions required by contract; communicates appropriate information to affected program elements in a timely manner. Assess the contractor's risk management practices, especially the ability to identify risks and formulate and implement risk mitigation plans. If applicable, identify any other areas that are unique to the contract, or that cannot be captured elsewhere under the Management element.

A2.25.3.1 Integration and coordination of activities should reflect those required by the Integrated Master Plan/Schedule. Also consider the adequacy of the contractor's mechanisms for tracking contract compliance, recording changes to planning documentation and management of cost and schedule control system, and internal controls, as well as the contractor's performance relative to management of data collection, recording, and distribution as required by the contract.

**A2.26 Block 18e Utilization of Small Business.** FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native

Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Veteran Owned, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Minority Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A2.26.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Where applicable, assess compliance with Small Business Subcontracting Plan (Test Program)) including any program specific data required in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.26.2 It may be necessary to seek input from the Small Business specialist, ACO or PCO in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted. In cases where the contractor has a comprehensive subcontracting plan, request the DCMA Comprehensive Subcontracting Plan Manager to provide input including any program specific performance information.

A2.26.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "green" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan (see AMS 3.6.1-6). In such case, the Utilization of Small Business area must be rated "red".

A2.26.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A2.26.5 Ratings will be in accordance with definitions described in Attachment 1, "Evaluation Rating Definitions (Utilization of Small Business)."

A2.26.6 A contract may have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

**A2.27 Block 18f Other Areas.** Specify additional evaluation areas that are unique to the contract or that cannot be captured elsewhere on the form. More than one type of entry may be included but should be separately labeled. If extra space is needed, use Block 20.

A2.27.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18f). The AO should translate the award fee earned to color ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee.

Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A2.27.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type incentive contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18f).

A2.27.3 Use Block 18f in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form. As an example, this block may be used to address security issues, provide an assessment of provisioning line items or other areas as appropriate.

**A2.28 Block 19 Variance (Contract-to-Date).** If Cost Performance Report (CPR) or Cost/Schedule Status Review (C/SSR) data are available, identify the current percent cost variance to date, the Government's estimated completion cost variance (percent), and the cumulative schedule variance (percent). Indicate the cutoff date for the CPR or C/SSR used.

A2.28.1 Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, column 6 of the C/SSR) by the Budgeted Cost of Work Performed (BCWP) and multiply by 100.

A2.28.2 Compute completion cost variance percentage by dividing the Contract Budget Baseline (CBB) less the Government's Estimate At Completion (EAC) by CBB and multiplying by 100. The calculation is  $[(CBB - EAC)/CBB] \times 100$ . The CBB must be the current budget base against which the contractor is performing (including formally established Over Target Baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in Block 20 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR that described the baseline adjustment. For example, "The contract baseline was formally adjusted on (date); see CPAR for (period covered by report) for an explanation."

A2.28.3 Compute cumulative schedule variance percentage by dividing the Budgeted Cost of Work Performed (BCWP) less budgeted cost of work scheduled (BCWS) by BCWS and multiply by 100. The calculation is  $[(BCWP - BCWS)/BCWS] \times 100$ . If the schedule variance exceeds 15 percent (positive or negative), briefly discuss in Block 20 the significance of this variance for the contract effort.

**A2.29 Block 20 AO Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of color rating (e.g., even "green" or "satisfactory" ratings require narrative support). Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18 or 19. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract

incentives; or award fee evaluations. The AO's comments in Block 20 may be up to 16,000 characters (approximately three pages) in CPARS.

A2.29.1 The AO must choose the applicable choice to the following statement after block 20: "Given what I know today about the contractor's ability to execute what he promised in his proposal, I (definitely would not, probably would not, might or might not, probably would or definitely would) award to him today given that I had a choice."

A2.30 **Block 21 AO Signature.** The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX ), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A2.31 **Block 22 Contractor Comments.** Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A2.32 **Block 23 Contractor Representative Signature.** The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A2.33 **Block 24 RO Comments.** The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A2.34 **Block 25 - RO Signature.** The RO will enter his or her name, title, organization (AF users do not include a code), phone number in the following format: (XXX) XXX-XXXX, email address, FAX number, and date when completing the CPAR.

### **Attachment 3 Instructions for Completing a Services, Information Technology, or Operations Support CPAR**

A3.1 All business sectors, except Systems, and construction and architect-engineer, will be completed on this form.

A3.2 **Block 1 Name/Address of Contractor.** State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) code. All codes can be accessed by using the on-screen "lookup" function provided in the electronic form.

A3.3 **Block 2 Type Report.** Indicate whether the CPAR is an initial, intermediate, or final report. If this is an "out-of-cycle" report, select "out-of-cycle." If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select "Addendum."

**A3.4 Block 3 Period of Performance Being Assessed.** State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

**A3.4.1 Period of Performance for Delayed Starts, Protests or Phase-In Periods.** In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPAR Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPAR has been processed.

**A3.4.2 Period of Performance for Intermediate/Final Reports.** CPAR assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPAR Focal Point.

**A3.4.3 Period of Performance for Out-of-Cycle Reports.** Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to the CPARS AIS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of- Cycle report posted in the CPARS AIS (and ultimately the PPIRS), the CPAR will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

**A3.5 Block 4a Contract Number.** Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order number field should be used to reflect the contract/schedule/agreement number for the order/call.

**A3.6 Block 4b Business Sector and Sub-Sector.** Service/IT/Operations

**A3.7 Block 5 Contracting Office (Organization and Code).** Identify the contracting office symbol.

**A3.8 Block 6 - Location of Contract Performance.** Provide a geographical reference (e.g., nearest city and installation name) if performance is on a military installation.

**A3.9 Block 7a Contracting Officer.** Self-explanatory.

**A3.9.1 Block 7b Phone Number.** Include the commercial phone number in the following format:  
(XXX) XXX-XXXX

**A3.10 Block 8a Contract Award Date.** Identify the date of contract award or select the date on the on-screen, drop-down calendar.

**A3.10.1 Block 8b Contract Effective Date.** Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar date only if that date is later than Block 8a, Contract Award Date.

**A3.11 Block 9 Contract Completion Date.** Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

**A3.12 Block 10 N/A.** Not applicable.

**A3.13 Block 11 Awarded Value.** Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order.

**A3.14 Block 12 Current Contract Dollar Value.** State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task/job order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs where orders will be assessed individually, state the current obligated amount of the individual order, including modifications.

**A3.15 Block 13 Basis of Award.** Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

**A3.16 Block 14 Contract Type.** Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

**A3.17 Block 15 Key Subcontractors and Description of Effort Performed.** Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort. If possible, include the amount of subcontract costs of the total contract effort. Discussion of the prime contractor's management of the subcontractor should be included in Block 18d-Business Relations.

**A3.18 Block 16 Program Title and Phase of Acquisition.** Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify the type of services (for example, professional services, maintenance, installation or information technology services).

**A3.19 Block 17 Contract Effort Description.** Provide a description of the contract effort that identifies the key requirements and/or type of effort. This section is of critical importance to future source selection officials. The description should be detailed enough so that it can be used in



determining the relevance of this program to future source selections. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. Ensure acronyms are identified. For task/delivery order contracts, state the number of orders issued during the period.

**A3.20 Small Business Utilization.** Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR) /Summary Subcontracting Report (SSR)

**A3.21 Block 18 Evaluation Areas.** Evaluate each area based on the following criteria:

A3.21.1 Each area assessment must be supported by objective data (or subjective observations) that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the PM, Contracting Officer and other specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example include the Contracting Officer's Representative (COR) for the program and may also be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, data, etc.

A3.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A3.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A3.21.4 Evaluate all areas which pertain to the contract under evaluation, unless they are not applicable ("N/A").

A3.21.5 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A3.21.6 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A3.21.7 Ratings will be in accordance with the definitions in Attachment 2.

A3.21.8. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than satisfactory solely for not performing beyond the requirements of the contract.

**A3.22 Block 18a Quality of Product or Service.** Assess the contractor's conformance to contract requirements, specifications and standards of good workmanship (e.g., commonly accepted technical, professional, environmental, or safety and health standards). List and assess any sub-elements to indicate different efforts where appropriate. Include, as applicable, information on the following:

1. Are the reports data accurate?
2. Does the product or service provided meet the specifications of the contract?
3. Does the contractor's work measure up to commonly accepted technical or professional standards?
4. What degree of FAA technical direction was required to solve problems that arise during performance?

For Operations Support: Assess how successfully the contractor meets program quality objectives such as production, reliability, maintainability and inspection. The AO must be flexible in how contractor success is measured; e.g., using data from field reliability and maintainability and failure reports, user comments and acceptance rates, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall production process to include material control, shop planning and control, and providing status updates.

**A3.23 Block 18b Schedule.** Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or affect the schedule variance).

This assessment of the contractor's adherence to the required delivery schedule should include the contractor's efforts during the assessment period that contributes to or affect the schedule variance. This element applies to contract closeout activities as well as contract performance. Instances of adverse actions such as the assessment of liquidated damages or issuance of Cure Notices, Show Cause Notices, and any other notifications to the contractor of serious contract performance issues are indicators of problems which may have resulted in variance to the contract schedule and should, therefore, be noted in the evaluation.

**A3.24 Block 18c Cost Control.** (Not required for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Include, as applicable, the following information:

1. Does the contractor keep within the total estimated cost (what is the relationship of the negotiated costs and budgeted costs to actuals)?
2. Did the contractor do anything innovative that resulted in cost savings?
3. Were billings current, accurate and complete?
4. Are the contractor's budgetary internal controls adequate?

Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the

UCA was in effect must be included under the cost element. The contractor's performance under the UCA will be separately identified but considered in the overall annual ratings.

**A3.25 Block 18d Business Relations.** Assess the integration and coordination of all activity needed to execute the contract, specifically the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals, the contractor's history of reasonable and cooperative behavior (to include timely identification of issues in controversy), customer satisfaction, timely award and management of subcontracts. Include, as applicable, information on the following:

1. Is the contractor oriented toward the customer?
2. Is interaction between the contractor and the government satisfactory or does it need improvement?
3. Include the adequacy of the contractor's accounting, billing, and estimating systems and the contractor's management of Government Property (GFP) if a substantial amount of GFP has been provided to the contractor under the contract.
4. Address the timeliness of awards to subcontractors and management of subcontractors, including subcontract costs. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.
5. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team.

**A3.26 Block 18e Management of Key Personnel (For Services and Information Technology Business Sectors only - Not Applicable to Operations Support).** Assess the contractor's performance in selecting, retaining, supporting, and replacing, when necessary, key personnel. For example:

1. How well did the contractor match the qualifications of the key position, as described in the contract, with the person who filled the key position?
2. Did the contractor support key personnel so they were able to work effectively?
3. If a key person did not perform well, what action was taken by the contractor to correct this?
4. If a replacement of a key person was necessary, did the replacement meet or exceed the qualifications of the position as described in the contract schedule?

**A3.27 Block 18f Utilization of Small Business.** FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Universities and Minority Educational Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

**A3.27.1** Assess compliance with all terms and conditions in the contract relating to Small Business participation. Assess any small business participation goals which are stated separately in the contract.

Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.27.2 It may be necessary to seek input from the Small Business Office or Contracting Officer in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted

A3.27.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "satisfactory" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan. In such case, the Utilization of Small Business area must be rated "unsatisfactory".

A3.27.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A3.27.5 Ratings will be in accordance with definitions described in Attachment 2, "Evaluation Ratings Definitions (Utilization of Small Business)."

A3.27.6 A contract must have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A3.28 **Block 18g Other Areas.** Specify additional evaluation areas that are unique to the contract, or that cannot be captured elsewhere on the form. More than one type of entry may be included, but should be separately labeled. If extra space is needed, use Block 20.

A3.28.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18g). The AO should translate the award fee earned to adjectival ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A3.28.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18g).

A3.28.3 Use Block 18g in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form.

A3.29 **Block 19 N/A.** Not applicable.

**A3.30 Block 20 Assessing Official Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of rating. Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal assessment could, for example, be supported by information concerning personnel changes or schedule delinquency rate. Key personnel familiar with the effort may have been replaced by less experienced personnel. Sources of the data used by the AO for the assessment may include customer/field surveys or evaluation of contractor reports. The Contracting Officer should be contacted to ensure that all applicable data has been incorporated. Block 20 comments may be up to 16,000 characters (approximately three pages) in CPARS.

**A3.30.1** The AO must choose the applicable choice to the following statement after Block 20: “Given what I know today about the contractor’s ability to execute what he promised in his proposal, I (definitely would not, probably would not, might or might not, probably would or definitely would) award to him today given that I had a choice.”

**A3.31 Block 21 AO Signature.** The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

**A3.32 Block 22 Contractor Comments.** Completed at the option of the contractor. The contractor’s narrative comments may be up to 16,000 characters (approximately three pages).

**A3.33 Block 23 Contractor Representative Signature.** The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

**A3.34 Block 24 RO Comments.** The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO’s narrative comments may be up to 16,000 characters (approximately three pages).

**A3.35 Block 25 - RO Signature.** The RO will enter his or her name, title, organization, phone number in the following format: (XXX)XXX-XXXX, email address, FAX number, and date when completing the CPAR.

#### Attachment 4 CPARS Website Features

Features of the CPARS website include:

1. The “production” CPAR system for actual entry of the performance evaluation data;
2. The “practice” CPAR system. The practice system is a mirror image of the functionality of the CPAR system using a separate database of simulated CPAR records. The practice system allows users to gain familiarity with the system without actually entering live performance evaluation data;

3. A “requirements” page that describes hardware and software required, security access levels, security features, how to obtain a user account and technical service support, and answers to frequently asked questions.
4. Instructions on Internet Explorer (IE) fixes that may be necessary for FAA access to CPARS;
5. A Quality Checklist that tutors users on completing a quality evaluation;
6. Link to reference material;
7. Link to CPARS Training;
8. Access Request forms;
9. Software Release history; and
10. Metrics (updated quarterly).